IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

John Doe,	*	
Plaintiff,	*	Civil Action No. 2:16-cv-171
	*	
v.	*	Judge Frost
	*	Magistrate Judge Kemp
The Ohio State University; Jane Doe;	*	
Javaune Adams-Gaston; Kelly B . Smith;	*	
Matthew B. Page, and Natalie Spiert,	*	
	*	**JURY DEMAND**
Defendants.	*	
	*	

FIRST AMENDED COMPLAINT

Plaintiff John Doe ("John Doe"),[1] by and through his attorneys, complains as follows against Defendants: (a) The Ohio State University ("OSU"), (b) Jane Doe ("Jane Doe"), (c) Dr. Javaune Adams-Gaston ("Adams-Gaston"), OSU's Vice President for Student Life; (d) Kelly B. Smith, an Assistant Director of OSU's Office of Student Life ("Smith"); (e) Matthew B. Page ("Page"), an Assistant Director of OSU's Office of Student Life; and (f) Natalie Spiert ("Spiert"), OSU's Student Advocacy Program Coordinator. (OSU, Adams-Gaston, Smith, Page, and Spiert hereinafter collectively referred to as "State Defendants." Together, Adams-Gaston, Smith, Page and Spiert are referred to as "Individual Defendants.").

NATURE OF THE ACTION

1) Having been irreparably harmed by false allegations of sexual misconduct, John Doe seeks damages and injunctive relief to remedy emotional, mental, economic, and physical harm

[1] *See generally, John Doe's Motion to Allow the Parties to Use Pseudonyms and to Seal Photographs* (containing the basis for John Doe's request for using pseudonyms in this proceeding and to file under seal photographs containing sensitive information).

caused by Defendants. Plaintiff's causes of action include: defamation, intentional infliction of emotional distress, violations of Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681, *et seq.*, and violations of the Fifth and Fourteenth Amendments to the Ohio & United States Constitutions, 42 U.S.C. §1983

2) For example, OSU violated Title IX by creating a gender biased, hostile environment against males, like John Doe, based in part on OSU's pattern and practice of disciplining male students who accept physical contact initiated by female students.

3) John Doe's harm stems from discipline OSU and State Defendants imposed on John Doe. Jane Doe and John Doe engaged in a long-term consensual sexual relationship. After the relationship ended, Jane Doe filed a false complaint with OSU accusing John Doe of engaging in sexual misconduct on two occasions: (1) on their first date in September 2012 ("First Date"); and (2) on the day their relationship ended, April 21, 2014 ("Last Date").

4) John Doe did not engage in sexual misconduct on his First Date or Last Date with Jane Doe. Rather, Jane Doe initiated all relevant physical contact with John Doe on those dates when she knew or should have known John Doe lacked the capacity to consent because he was incapacitated by alcohol. Jane Doe's initiation of this contact includes, but is not limited to, the following actions or admissions by Jane Doe:

(a) Jane Doe admits that she and John Doe engaged in a consensual sexual relationship from First Date until Last Date;

(b) During their consensual sexual relationship, Jane Doe sent naked photographs of her vagina and breasts and sexually explicit text messages to John Doe;

(c) Jane Doe admits that, aside from the First Date and the Last Date, her only objection to sex with John Doe between September 2012 and April 2014, was that he was not an "active" enough participant and she had to do all of the work;

(d) Jane Doe admits that John Doe ended their relationship on Last Date;

(e) Jane Doe admits that she voluntarily went to John Doe's apartment on Last Date, where she and John Doe both became intoxicated. Jane Doe asserts that she and John Doe had a sexual encounter in his shower. Jane Doe declared her love for John Doe after the sexual encounter and her desire for their relationship to be more serious. John Doe expressed his surprise, told Jane Doe that he cared about her, but did not share her deeper feelings of love. Because of the differing desires from the relationship, John Doe ended their relationship on this day;

(f) Jane Doe admits that she wanted to continue seeing John Doe after the couple's Last Date, despite her sexual assault allegations;

(g) Regarding the couple's First Date, Jane Doe admits that the sexual assault that she alleged to have occurred involved John Doe performing oral sex on her. Jane Doe admitted that she regretted beginning their relationship in this manner;

(h) Jane Doe admits that she continued to contact John Doe after their First Date in September 2012 and to pursue a romantic and sexual relationship with him. To rectify the embarrassment of allowing John Doe to perform oral sex on her on their First Date, Jane Doe instituted a no more sex until after "three dates" rule, which she cannot remember if she followed.

(i) Jane Doe did not tell John Doe or anyone else that she was sexually assaulted on First Date. In fact, Jane Doe did not allege a sexual assault on First Date in her initial complaint with OSU, but added this allegation later.[2]

5) On or about November 20, 2014, seven months after their Last Date, Jane Doe filed a false and untimely complaint with OSU alleging that John Doe sexually assaulted her on their Last Date. Sometime after the initial complaint, Jane Doe added allegations that John Doe also sexually assaulted her on their First Date, which occurred more than two years earlier. (OSU Documents)

6) Jane Doe admitted that she filed the sexual assault complaint with OSU against John Doe because she wanted John Doe to lose his job as a registered nurse at OSU. (*See* OSU

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[2] Prior to filing this Complaint, John Doe reviewed documents and listened to an audio recording of the hearing that OSU held in the course of investigating Jane Doe's allegations. OSU refused to allow John Doe to copy these documents or record the hearing. John Doe's allegations, in part, are based upon these documents and the audio recording in OSU's file, which will be referred to as "OSU Documents."

Documents) It should be noted, academic studies suggest a substantial percentage of sexual assault allegations are false. *See e.g.,* Reggie D. Yager, *What's Missing From Sexual Assault Prevention and Response,* (April 22, 2015), pgs.46-62 http: ssrn.com/abstract=2697788. The rationale behind many of these false allegations of sexual assault are: (i) the need for a cover story or alibi; (ii) retribution for a real or perceived wrong, rejection or betrayal; (iii) desire to gain sympathy or attention; or (iv) extortion. *Id.,* p.63-65.

7) Jane Doe did not file criminal charges against John Doe because she did not believe she could provide the evidence required for the police to take action. (*See* OSU Documents)

8) Upon information and belief, OSU and State Defendants knew that Jane Doe filed the allegations against John Doe seeking revenge. (*See* OSU Documents)[3]

9) The only information John Doe possesses regarding the alleged sexual encounters with Jane Doe on First Date and Last Date come from Jane Doe. John Doe has no recollection of either sexual encounter because either: (1) John Doe's alcohol intake caused him to become incapacitated; or (2) the alleged events did not actually happen.

10) Nevertheless, during late 2014 and early 2015, OSU engaged in a gender biased investigation of John Doe which culminated in John Doe's constructive discharge as an employee of OSU's Wexner Medical Center ("OSUWMC"), permanent dismissal from

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[3] It should be noted, the "information and belief" allegations in the Complaint are based on at least the following two factors: (1) the evidence referenced and/or exhibits attached to this Complaint which provide a plausible basis for Plaintiff's "information and belief" allegations; and (2) John Doe believes Defendants are in possession and/or control of additional evidence supporting Plaintiff's "information and belief" allegations and John Doe believes he will obtain this evidence in discovery. John Doe made a good faith effort to obtain this information through a public records request, but OSU refused to produce much of the requested information. (*Exhibit A*, Affidavit of Eric Rosenberg*)*

OSU without the opportunity to reenroll in the future, notation of permanent dismissal on his academic transcript, and being barred from any OSU campus or property even though OSU possessed facts proving Jane Doe consented to and/or initiated all relevant physical contact with John Doe when she knew or should have known John Doe lacked the capacity to consent because he was incapacitated by alcohol. In doing so, OSU and/or State Defendants violated OSU's policies, John Doe's Due Process rights, and Title IX. (*See* OSU Documents & *Exhibit B*)

THE HISTORY OF OSU'S UNLAWFUL DISCIPLINE OF JOHN DOE

11) On April 11, 2011, the United States Department of Education's ("DOE") Office of Civil Rights ("OCR") sent a "Dear Colleague" letter to colleges and universities with instructions on how to comply with Title IX when investigating and resolving complaints of sexual misconduct. Most notably, the Dear Colleague Letter required schools to adopt the lowest burden of proof—"more likely than not"—in cases involving sexual misconduct, including assault. Several colleges had been using "clear and convincing" and some, like Stanford, applied the criminal standard, "beyond a reasonable doubt." The Dear Colleague Letter states that schools should "minimize the burden on the complainant," transferring alleged perpetrators, if necessary away from shared courses or housing and should give both parties the right to appeal a decision, which amounts to double jeopardy for an accused student. The Dear Colleague Letter is contained at (http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html).

12) The Dear Colleague Letter was not subject to notice-and-comment rulemaking, and therefore its validity as binding law is at best questionable. Nevertheless, some universities, including OSU, treat the Dear Colleague Letter as binding authority. Senator James

Lankford wrote to the DOE on January 7, 2016 to express his concerns that the DOE's Dear Colleague letters are not interpretive, but are unlawfully altering the regulatory and legal landscape of Title IX and the U.S. Constitution. (*Exhibit C)*

13) In February 2014, Catherine E. Lhanon, the assistant secretary of education who heads OCR, told college officials attending a conference at the University of Virginia that schools need to make "radical" change. According to the Chronicle of Higher Education, college presidents suggested afterward that there were "crisp marching orders from Washington." *See Colleges Are Reminded of Federal Eye on Handling of Sexual-Asssault Cases, Chronicles of Higher Education, February 11, 2014*.

14) On or about June 23, 2010, OSU became ensnared in an investigation by DOE's OCR. *See e.g., Exhibit D*. OSU is one of many institutions subject to these types of OCR investigations.[4] *See e.g.*, Nick Anderson, *Tally of Federal Probes of Colleges on Sexual Violence Grows 50 Percent Since May*, WASH POST, Oct. 19. 2014, https://www.washingtonpost.com/local/education/tally-of-federal-probes-of-colleges-on-sexual-violence-grows-50-percent-since-may/2014/10/19/b253f02e-54aa-11e4-809b-8cc0a295c773_story.html; http://projects.chronicle.com/titleix/cases (containing database of information related DOE's Title IX investigations of colleges and universities since 2011).

15) OCR's investigations primarily involve females alleging the universities they attend condone sexual harassment and/or sexual violence by males. These complaints by female students have triggered OCR investigations of academic institutions which include, but are

[4] John Doe sent a Freedom of Information Act request to the DOE relating to complaints received and investigations involving OSU. In response, the DOE produced the documents attached as *Exhibit F*.

not limited to: (i) the University of Virginia; (ii) Southern Methodist University; (iii) Yale University; (iv) George Washington University; (v) Tufts University; and (vi) the University of Montana in Missoula. *See generally*, http://www2.ed.gov/documents/press-releases/university-virginia-letter.pdf; (containing OCR's letter to the University of Virginia regarding OCR's Title IX investigation);http://www2.ed.gov/documents/press-releases/southern-methodist-university-letter.pdf; containing OCR's letter to Southern Methodist University regarding OCR's Title IX investigation); http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01112027-a.html (containing OCR's letter to Yale University regarding OCR's Title IX investigation). http://www2.ed.gov/about/offices/list/ocr/docs/investigations/11112079-a.pdf (containing OCR's letter to George Washington University regarding OCR's Title IX investigation). http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01102089-a.html (containing OCR's letter to Tufts University regarding OCR's Title IX investigation).

16) Many academics and organizations have raised alarms that DOE/OCR's worthwhile goal of protecting female college students from sexual misconduct has evolved into an unlawful example of federal governmental overreach which violates the rights of male students who never engaged in misconduct. *See e.g., Open Letter From Sixteen Members of Penn Law School Faculty* (Feb. 17. 2014), http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/02/19/open-letter-from-16-penn-law-school-professors-about-title-ix-and-sexual-assault-complaints/ ("Although we appreciate the efforts of Penn and other universities to implement fair procedures, particularly in light of the financial sanctions threatened by OCR, we believe that OCR's approach exerts improper pressure upon universities to adopt procedures that do not afford fundamental fairness."); Barclay Sutton

Hendrix, *A Feather On One Side, A Brick On The Other: Tilting The Scale Against Males Accused of Sexual Assault In Campus Disciplinary Proceedings*, 47 Ga. L. Rev. 591, (2013); Stephen Henrick, *A Hostile Environment for Student Defendants*: *Title IX and Sexual Assault on College Campuses*, 40 N. Ky. L. Rev. 49 (2013); *Rethink Harvard's Sexual Harassment Policy,* LETTER TO EDITOR, BOSTON GLOBE, Oct. 15, 2015, http://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html; Janet Halley, *Trading the Megaphone for the Gravel Gavel in Title IX Enforcement,* HARV. L. REV. F. 103, 103-17, (2014); Samantha Harris, *Campus Judiciaries on Trial: An Update From the Court*, HERITAGE FOUNDATION, Oct. 6. 2015; http://report.heritage.org/Im165; Janet Napolitano, *"Only Yes Means Yes": An Essay on University Policies Regarding Sexual Violence and Sexual Assault*, Yale Law and Policy Review Volume 33; Issue 2 (2015); Robin Wilson, *Presumed Guilty,* CHRONICLE OF HIGHER EDUCATION (Sept. 3. 2014) http://chronicle.com/article/Presumed-Guilty/148529/?cid=a&utm_medium=en; ("Under current interpretations of colleges' legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically ablt to initiate sex, and therefore responsible for gaining the woman's consent."); Reggie D. Yager, *What's Missing From Sexual Assault Prevention and Response*, (April 22, 2015) http: ssrn.com/abstract=2697788.

17) As detailed in many of the publications cited above, OCR's investigations put millions of dollars in federal student aid at risk. This is because DOE/OCR can impose civil penalties

and/or suspend institutions from participating in federal student financial aid programs if DOE/OCR finds a university, such as OSU, did not do enough to discipline males alleged to have engaged in sexual misconduct with female students. Lhamon confirmed this risk of losing federal funds at a national conference at Dartmouth in the summer of 2014 when she said, "I will go to enforcement, and I am prepared to withhold federal funds." *See How Campus Sexual Assaults Came to Command New Attention*, NPR, August 12, 2014. In June 2014, Lhamon told a Senate Committee, "This Administration is committed to using all its tools to ensure that all schools comply with Title IX . . . " She further told the Committee:

> IF OCR cannot secure voluntary compliance from the recipient, OCR may initiate and administrative action to terminate and/or refuse to grant federal funds or refer the case to the DOJ to file a lawsuit against the school. To revoke federal funds—the ultimate penalty—is a powerful tool because institutions receive billions of dollars a year from the federal government for student financial aid, academic resources and many other functions of higher education. OCR has not had to impose this severe penalty on any institution recently because our enforcement has consistently resulted in institutions agreeing to take the steps necessary to come into compliance and ensure that students can learn in safe, nondiscriminatory environments.

18) For OSU, the withdrawal of federal funding would be catastrophic in part because, upon information and belief, OSU's undergraduate students received over $40,000,000 in Pell Grants and over $130,000,000 in Federal Student Loans in 2015. *See generally* *http://nces.ed.gov/collegenavigator/?q=ohio+state+university&s=all&id=204796#expenses*.

19) As detailed in some of the publications cited above, OCR investigations put immediate and tremendous pressure upon Universities such as OSU to severely discipline male students alleged to have engaged in sexual misconduct regardless of their innocence.

20) Therefore, upon information and belief, pressure from governmental agencies such as OCR/DOE and/or internal forces at OSU, caused OSU to take unlawful and gender biased disciplinary actions against John Doe. Evidence of these unlawful and/or gender biased

actions includes, but is not limited to OSU's pattern and practice of taking unlawful disciplinary actions against male students who were falsely accused of sexual misconduct. *See, e.g., John Doe v. The Ohio State University, et al., United States District Court for the Southern District of Ohio, Case No. 2:15-cv-02830.* Evidence of these unlawful and/or gender biased actions also includes, but is not limited to OSU's firing of the Marching Band Director, Jonathan Waters, in response to sexual harassment allegations. In highly-publicized litigation, Mr. Waters alleges that his termination was gender-biased and that similarly-situated female employees were treated differently in violation of the Fourteenth Amendment to the United Stated Constitution, 42 U.S.C. §1983, and Title IX. *See, Waters v. Drake, et al., U.S. District Court for the Southern District of Ohio, Eastern Division, Case No. 2:14-cv-01704*.

21) Based on the information detailed in this Complaint and upon information and belief, Defendants' unlawful discipline of John Doe occurred in part because of Defendants' archaic assumptions that female students do not sexually assault their fellow male students.

22) Further evidence of governmental pressure exerted upon OSU includes The White House's April 2014 report entitled "Not Alone" which threatens the elimination of federal funds by stating:

> If OCR finds a Title IX violation, the school risks losing federal funds. In these cases, OCR must first seek to voluntarily resolve the non-compliance before terminating funds. Through this voluntary resolution process, OCR has entered into agreements that require schools to take a number of comprehensive steps to remedy the problem on their campuses. www.whitehouse.gov/sites/default/files/docs/report_0.pdf

23) The White House also noted that:

> The Justice Department (DOJ) . . . shares authority with OCR for enforcing Title IX, and may initiate an investigation or compliance review of schools receiving DOJ financial assistance. If schools are found to violate Title IX and a voluntary resolution cannot be reached, DOJ can . . . seek to terminate DOJ funds. www.whitehouse.gov/sites/default/files/docs/report_0.pdf

24) Because of this increased scrutiny and heightened threats of loss of federal funds, OSU reached an agreement with the DOE on or about September 11, 2014 to settle the DOE's extensive and long-standing investigation into its compliance with Title IX (hereinafter "DOE Agreement"). http://www.ed.gov/news/press-releases/us-department-education-reaches-agreement-ohio-state-university-address-and-prevent-sexual-assault-and-harassment-students. Of the 55 universities on the DOE's original list of universities under investigation relating to the handling of sexual violence reports, OSU's was the longest-running. https://www.washingtonpost.com/local/education/ohio-state-reaches-accord-with-feds-on-steps-to-prevent-sexual-assault/2014/09/14/a304f50e-3c19-11e4-9587-5dafd96295f0_story.html.

25) To resolve the investigation, OSU agreed to an extensive and comprehensive revision of its Title IX compliance and obligations, as follows: (1) appoint, and publicize the appointment of, a Title IX Coordinator and Deputy Title IX Coordinators; (2) create a Title IX webpage; (2) establish a centralized Office of University Compliance and Integrity; (3) create a University-wide Title IX notice of nondiscrimination; (4) add links to the Student Conduct website to access information about sexual harassment and sexual assault; (5) form a sexual violence consultation team (a group of first responders that meets bi-weekly to discuss and respond to all sexual violence complaints); (6) increase Title IX training university-wide; (7) create a system of cooperation with university police; (8) **demonstrate responsive and appropriate actions taken against students, faculty and staff who**

violate Title IX as it relates to sexual harassment and sexual violence; and (9) address the sexually hostile environment that the University alleged existed in the OSU Marching Band by issuing a statement of the University.[5] The resolution took note of the fact that since 2013, OSU had permanently expelled **every student** found guilty of sexual assault. Upon information and belief, all of these students were male. (*See* OSU Documents) A copy of the Resolution Letter between OSU and the DOE is attached as *Exhibit D* and a copy of the Agreement is attached as *Exhibit E* (emphasis added).

26) The DOE has carefully monitored OSU's compliance with the DOE Agreement and its handling of sexual assault allegations. OSU has submitted thirteen status reports to DOE concerning its compliance efforts. The status reports are contained at http://titleix.osu.edu/global-navigation/ocr.html.

27) In response to pressure from the DOE, the DOJ, and/or the White House, educational institutions like OSU are being counseled to severely limit procedural protections afforded male students like John Doe in sexual misconduct cases. Two groups providing such counseling are: (1) the Association of Title IX Administrators' ("ATIXA"); and (2) the National Center for Higher Education Risk Management ("NCHERM")

28) Upon information and belief, OSU relies on either or both ATIXA and NCHERM in addressing allegations of sexual misconduct. (*See* OSU Documents)

29) The facts detailed in this Complaint prove OSU embraces ATIXA and NCHERM's gender bias and goal of limiting the procedural protections afforded male students like John Doe in sexual misconduct cases. ATIXA and NCHERM's goal regarding these limitations is

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[5] As referenced above, OSU's response was to terminate the male Band Director. *See*, *Waters*, *Case No. 2:14-cv-01704*.

detailed in part in their "2014 Whitepaper" entitled *Equity Is Such A Lonely Word.* www.ncherm.org/.../2012/01/2014-Whitepaper-FINAL.pdf. This Whitepaper states:

> "victims have historically been accorded 3/5 of the rights of an accused individual (or less), and *victims are typically women*, equity may require institutions to recalibrate the pendulum to right the historical imbalance. An equitable process on many campuses will force a victim focus, but only as a casualty of history." (emphasis added).

30) Over 90% of the colleges and universities in the United States reported **none** of their students were raped in 2014. Similarly, in 2014, OSU reported 22 rapes among its student body of over 50,000 students. Prior to 2014, OSU reported rapes within the category of "Sex Offenses Forcible," and even then reported 27 offenses in 2013 and 26 offenses in 2012 among its student body of over 50,000 students. https://dps.osu.edu/sites/default/files/annual_security_fire_safety_report.pdf. *See also* http://thelantern.com/2014/09/ohio-state-report-sexual-assaults-reported-on-campus-increased-in-2013/; http://ope.ed.gov/security/InstList.aspx

31) Nevertheless, OSU routinely portrays a large portion of their male students as sexual predators by embracing commonly used, albeit incorrect, statistics as to the number of college women purportedly raped. For example, the opening page of the OSU Office of Student Life's Sexual Civility and Empowerment website says "1/4 college women report surviving rape or attempted rape at some point in their lifetime." Immediately below this statistic is the quote, "Oddly then, in our search for meaning, we often assign victims too much blame for their assaults, and offenders too little." http://sce.osu.edu.

32) Similarly, OSU quotes the Rape Crisis Center's statement that: "1 out of 6 American women has been the victim of attempted or completed rape . . . ." http://sce.osu.edu/get-info/sexual-violence-education/fast-facts/

33) OSU's campaign to portray a large portion of their male students as sexual predators is echoed by President Obama's "It's On Us" campaign which states: "[a]n estimated one in five women has been sexually assaulted during her college years. . . ." https://www.whitehouse.gov/blog/2014/09/19/president-obama-launches-its-us-campaign-end-sexual-assault-campus;https://www.whitehouse.gov/the-press-office/2014/04/29/fact-sheet-not-alone-protecting-students-sexual-assault. OSU joined the "It's On Us" campaign. https://usg.osu.edu/briefing/its_on_us/its_on_us

34) In fact, on September 17, 2015, Vice President Joe Biden came to OSU's campus to promote the one-year anniversary of the "It's On Us" campaign when OSU simultaneously unveiled the initiatives required under the DOE Agreement, otherwise known as "Buckeyes Act." *See* http://radio.wosu.org/post/biden-brings-campaign-against-sexual-assaults-osu#stream/0; http://www.dispatch.com/content/blogs/the-daily-briefing/2015/09/biden-visits-osu.html; http://www.cleveland.com/open/indExhibitssf/2015/09/joe_biden_visits_ohio_state_to.html; https://www.osu.edu/buckeyesact.

35) During his speech at OSU, VP Biden made it clear that the purpose of the "It's On Us" campaign is to protect female students from male students. VP Biden also made it clear that the Obama Administration and the DOE used Title IX investigations and potential loss of federal funding to encourage university presidents to join the campaign. Throughout his speech, VP Biden encouraged "guys" to take the "It's On Us" pledge to combat the fact that 1 in 5 college women are the victim of sexual assault while attending college. https://www.osu.edu/buckeyesact/vpbidenvideo.html

36) By joining the "It's On Us" campaign, OSU encourages its faculty, staff and students to take the "It's On Us" pledge which seeks to protect female students from male students and seeks the aggressive prosecution of male students alleged to have in engaged in sexual misconduct via statements such as:

(a) "It's on us to make sure *guys* know that if *she* doesn't or can't consent to sex, it's sexual assault." *See generally*, *http://itsonus.org/indExhibithtml#pledge;* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCMQFjABahUKEwjW2vihqpbJAhUI02MKHeaeC94&url=http%3A%2F%2Fitsonus.org%2Fassets%2Ffiles%2FIt%27s_On_Us_Organizing_Guide_Fall_2015.pdf&usg=AFQjCNGy24MM2vn7-N7HwwUnshc6d6q0gQ&sig2=nlpOPMfxwODg7eSMWYrbxA&cad=rja, pg. 11 (emphasis added);

(b) Suggesting individuals videotape themselves "[s]ay[ing] to camera…it's on us to recognize that if a *woman* doesn't or can't consent to sex, it's rape." *Id.*, pg. 14 (emphasis added);

(c) Stating: "*Never* blame the victim," "*always* be on the side of the survivor," and "*trust* the survivor." *Id.,* pg.26 (emphasis added);

(d) VP Biden's statement that those that make their rape allegations public "give millions of women hope." https://twitter.com/ItsOnUs; and

(e) President Barack Obama's statement on International Day for the Elimination of Violence Against Women that: "…together we can change our culture for the better by ending violence against *women and girls*…IT'S ON US…" ; *Exhibit U* (containing page from It's On Us Facebook page) (emphasis added).

37) Similarly, The White House's April 2014 report entitled "Not Alone" also asserts at page 5: "[o]ne in five women is sexually assaulted in college." https://www.notalone.gov/assets/report.pdf

38) According to OSU's Enrollment Report publications, there are 51,759 undergraduates enrolled at OSU's main campus, 51% of which are female. http://enrollmentservices.osu.edu/report.pdf Therefore, if the one in five statistic were applicable, approximately 10,350 female OSU students would be sexually assaulted during their four year stay at OSU's main campus.

39) Emily Yoffe's 2014 article in *Slate* refutes sexual assault statistics relied on by President Obama and/or OSU. Emily Yoffe, The College Rape Overcorrection, SLATE, December 7, 2014, http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html Ms. Yoffe asked Christopher Krebs - the lead author of the study cited by President Obama - whether his study represented the experience of the approximately 12 million female students in America. *Id.* Mr. Krebs stated those involved in the study, "don't think one in five is a nationally representative statistic." *Id.* This was because Mr. Krebs stated his team's sampling of only two schools "[i]n no way . . . make[s] our results nationally representative." *Id. See also,* Reggie D. Yager, *What's Missing From Sexual Assault Prevention and Response,* (April 22, 2015) http: ssrn.com/abstract=2697788 (discussing a United States Department of Justice study from 2014 which determined the "rates of sexual assault for college women is 6.1 per 1000 students . . . ."); Heather MacDonald, *An Assault on Common Sense,* The Weekly Standard, Nov. 2, 2105, http://www.weeklystandard.com/an-assault-on-common-sense/article/1051200 (detailing why a recent survey conducted by Association of American Universities has been improperly distorted to falsely suggest large percentages of female college students are being sexually assaulted on America's college campuses).

40) Ms. Yoffe also noted that if the "one-fifth to one-quarter assertion [regarding sexual assaults on college campuses were accurate that] would mean that young American college women are raped at a rate similar to women in Congo, where rape has been used as a weapon of war." Emily Yoffe, The College Rape Overcorrection, SLATE, December 7, 2014,

http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html And, Ms. Yoffe debunked the sexual assault statistics relied on by President Obama and/or OSU by discussing a:

> "special report from the Bureau of Justice Statistics title 'Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013' . . . [which] found that contrary to frequent assertions by some elected officials, about the particular dangers female college students face, they are less likely to be victims of sexual assault than their peers who are not enrolled in college. The report found . . . the incidence [of sexual assault] . . . was far lower than anything approaching 1 in 5: 0.76 percent for nonstudents and 0.61 percent for students." Emily Yoffe, The Problem with Campus Sexual Assault Surveys, SLATE, Sept. 24, 2015. http://www.slate.com/articles/double_x/doublex/2015/09/aau_campus_sexual_assault_survey_why_such_surveys_don_t_paint_an_accurate.html

41) OSU's legitimate goal of preventing sexual assault is *not* the issue in, nor is it the basis for, this Complaint. Rather, this Complaint addresses OSU's unlawful and/or gender biased discipline of male students like John Doe who have been falsely accused of sexual assault.

42) OSU's unlawful actions and/or gender bias has created a hostile environment which in turn creates an adverse educational setting in violation of Title IX in part because OSU engages in a pattern and practice of subjecting male students like John Doe to sex stereo-typing discrimination based on unlawful notions of masculinity and femininity. This hostile environment causes innocent males on OSU's campus to be unlawfully disciplined and interferes with males' ability to participate in or benefit from various activities including learning on campus. (*See OSU Documents)*

43) OSU demonstrates its unlawful conduct and/or gender bias, in part, by alleging that the policies and/or procedures used during John Doe's disciplinary process (hereinafter "OSU Policies") related to sexual assault are gender neutral when, in fact, OSU implements OSU

Policies in a gender biased fashion in order to unlawfully discipline male students falsely accused of sexual misconduct, such as John Doe. OSU Policies are contained, in part at Exhibit G, which contains the documents produced from OSU in response to John Doe's public records request, and at www.studentconduct.osu.edu.

JOHN DOE'S ENROLLMENT AT OSU AND RELATIONSHIP WITH JANE DOE

44) John Doe is from Ohio where he worked diligently in high school and graduated with honors.

45) After high school, John Doe obtained an associate degree in nursing from the University of Toledo and became a registered nurse ("RN") in 2009. John Doe pursued a medical career because he was raised to embrace a love of service to others and found an outlet for that service in providing care to those in need.

46) In 2011, John Doe was excited to begin his studies at OSU to complete his Bachelor's degree with a goal of attending medical school after graduation. From 2010-2014, John Doe was a full-time student and also worked as an RN at OSUWMC. In order to maintain both his full-time course schedule and his full-time work schedule, John Doe consistently worked two twelve-hour night shifts on the weekend, in addition to working during the week.

47) John Doe first met Jane Doe on September 2, 2012, when she was admitted to the OSUWMC Emergency Room as a patient. On September 2, 2012, Jane Doe had become intoxicated from drinking 7-8 alcoholic beverages, fallen, injured her knee, and ended up being taken in an ambulance to the ER. John Doe was randomly assigned as her nurse. John Doe did not request that Jane Doe be assigned as his patient. (*Exhibit H, February 20, 2015 Case Report*)

48) Jane Doe's Friend (hereinafter "Friend"), who was also intoxicated, accompanied her to the emergency room on September 2, 2012. Jane Doe and Friend thought John Doe was cute. Although Jane Doe and Friend were talkative and flirtatious with John Doe, he remained professional at all times. Jane Doe and Friend tried to give John Doe their phone numbers, but he told them he could not take the numbers. Jane Doe and Friend wrote their phone numbers on the white board. John Doe erased the numbers. (*Id*.)

49) When Jane Doe was released, John Doe arranged for transportation and escorted her from the emergency room in a wheelchair. John Doe typically arranged for transportation for intoxicated patients. (*Id*.)

50) On the next day, September 3, 2012 at 3:27 pm, Jane Doe sent John Doe a "friend request" on Facebook.[6] (*Exhibit I*) John Doe accepted the request. Thereafter, upon information and belief, Jane Doe obtained John Doe's cell phone number from his Facebook page and texted him.

51) Jane Doe contacted John Doe because she wanted to date him. (*Exhibit H*)

52) Jane Doe and John Doe texted with one another and went on their First Date on or about September 22, 2012. John Doe cooked dinner for Jane Doe at his apartment. According to Jane Doe, both John and Jane Doe consumed alcohol during the evening. (*See OSU Documents*) Two of John Doe's roommates were also present at the apartment on the evening of Jane and John Doe's first date. The roommate had several friends over. (*See, text message attached as Exhibit J).* Although John Doe has no recollection, either because he was incapacitated or because the sexual encounter never occurred, Jane Doe asserts that

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6 *See generally, John Doe's Motion To Allow the Parties to Use Pseudonyms and to Seal Documents* (containing the basis for John Doe's request for using pseudonyms in this proceeding and to seal photographs and documents).

they engaged in physical contact, which included John Doe performing oral sex on Jane Doe. Jane Doe testified that she told John Doe that she did not want him to perform oral sex on her because she was having her period. Jane Doe testified that John Doe told her he did not care, so the oral sex continued without further objection. (*See OSU Documents and, Exhibit K, December 18, 2014 Statement of John Doe*)

53) Jane Doe regretted allowing John Doe perform oral sex on her on their First Date because she did not want their relationship to start with this level of physical intimacy. To assuage this guilt, Jane Doe instituted a rule—no sex until after three dates. Although Jane and John Doe continued regularly dating after First Date, she cannot recall whether or not she and John Doe lived up to her rule to wait to have sex again until after their third date. Nonetheless, Jane Doe admits she and John Doe commenced an ongoing consensual, sexual relationship after their First Date. *(See OSU Documents)*

54) During the time they dated, Jane Doe never told anyone that John Doe sexually assaulted her on their First Date. *(See OSU Documents)*

55) In fact, Jane Doe was happy to be dating John Doe and to be involved in a sexual relationship with him. Evidence of Jane Doe's happiness with the relationship with John Doe is the Valentine's card that she sent to him in 2013, which is attached as *Exhibit L*:

> [John Doe],
>
> Thank you for being there for me every single day. I appreciate you so very much. I love that I can tell you anything and know that you will understand me. You're my best friend. Happy Valentine's Day!
>
> Love, [Jane Doe]
>
> xoxo

56) Jane Doe's concerns about John Doe while they dated were that he did not have enough time to spend with her between his work and school schedule and that he was not an

"active" enough participant during sex, expecting her to do most of the work during the sExhibit *(Exhibit M & OSU Documents)*

57) Jane and John Doe continued dating until the end of the school year, or spring of 2013, because Jane Doe was returning to New Jersey for the summer and John Doe did not want to continue the relationship. Even though John Doe had ended the relationship, Jane Doe continued to contact John Doe by phone, text and Facetime.

58) When Jane Doe returned to school in the fall of 2013, she and John Doe resumed a relationship. They were friends who had an ongoing consensual, sexual relationship, but they were not "dating." As the following text messages demonstrate, and as Jane Doe testified at hearing, she most frequently initiated contact in their relationship:

September 14, 2013

Jane Doe: What are you going to do for your birthday?

John Doe: Nothing :(… I'm being forced to work till 11 on Monday morning, then I have a mandatory meeting and then hit bed, wake up for a lab?, then back to bed to hopefully get up early Tuesday to study for two exams… Not much of a birthday due to work How's your day going?

Jane Doe: What about Sunday or Tuesday?? Please [John]

John Doe: Tomorrow I work and that's the 16+ hour shift Tuesday should work :)

Jane Doe: Yay!!Tuesday night I'll bring you a cake and celebrate with you!

November 26, 2013

Jane Doe You didn't answer my snap :(

Jane Doe : /

John Doe: O yeah, the naked pictures

December 17, 2013

Jane Doe: You think I'm ugly so your not looking at my snaps??? :(

Jane Doe: Argh

Jane Doe: What. Is. Up.

Jane Doe: Are you still working???...

Jane Doe: This is why I got mad at you last time

(*See Exhibit M and OSU Documents)*

59) Their sexual encounters frequently occurred in the evenings after one or the other or both had consumed alcohol. (*See OSU Documents)*

60) Jane Doe sent John Doe naked photographs of her vagina and breasts on May 22, 2013, November 9, 2013 and December 18, 2013. (*Exhibit N*)[7] Contrary to her testimony that she and John Doe had no contact in December 2013 (*see OSU Documents),* Jane Doe was in fact communicating with John Doe throughout the fall semester of 2013, as evidenced by the following sexual text message or "sext" that Jane Doe sent to John Doe on December 26, 2013:

Jane Doe: How's it going stud

John Doe Hi?

Jane Doe: When do you get back? Can we get drunk and be totally freaky? Will you fuck me stupid when I go back to Ohio

(*Exhibit P*) Their consensual sexual relationship continued throughout the 2013-2014 school year, although their interactions decreased in early 2014 because, upon information and belief, Jane Doe started dating someone else. *(See OSU Documents)*

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[7] *See generally, John Doe's Motion To Allow the Parties to Use Pseudonyms and to Seal Documents* (containing the basis for John Doe's request for using pseudonyms in this proceeding and to seal photographs and documents).

61) During the couple's Last Date on April 21, 2014, Jane Doe accepted John Doe's invitation to come to his apartment. Jane Doe told her new boyfriend that she was going to visit John Doe. *Id.*

62) Upon her arrival at his apartment, John and Jane Doe conversed for a while, and soon after engaged in consensual, sexual intercourse. After sex, Jane Doe napped and John Doe watched television. After Jane Doe awoke, they drank alcohol and watched movies. Jane Doe voluntarily consumed alcohol. John Doe did not force Jane Doe to drink. Jane Doe spent most of the day at John Doe's apartment watching several movies. John Doe also napped at some point during the time Jane Doe was at his apartment. Both Jane Doe and John Doe were intoxicated during the visit. Jane Doe was never incapacitated. As Jane Doe testified, John Doe consumed more alcohol than she did on April 21, 2014 because John Doe poured drinks for each of them at the same time. Jane Doe, however, dumped some of her drinks out when John Doe was not looking so that she could control her level of intoxication. *Id.*

63) According to Jane Doe, she and John Doe took a shower at John Doe's apartment on the Last Date and had a sexual encounter in the shower. At varying times, Jane Doe has described the sexual encounter in the shower as "rape," "the motion of sex" and "sExhibit" John Doe has no recollection of taking a shower with Jane Doe on the Last Date, either because of intoxication or because Jane Doe fabricated the story. The only knowledge John Doe has about the alleged sexual encounter in the shower on the Last Date comes from Jane Doe. *Id.*

64) Towards the end of Last Date and after the effects of the alcohol wore off, Jane Doe initiated a conversation with John Doe about their relationship. Jane Doe shared with John

Doe that she loved him, and did not love her boyfriend. Jane Doe asked John Doe why he was not doing his part to make the relationship work and why he did not want to date her. John Doe was caught unaware because he did not realize Jane Doe had these feelings. He explained to Jane Doe that he cared about her, but was not in a position to have a committed relationship. Based on the realization that his feelings for Jane Doe were disproportionate to her feelings towards him, John Doe told Jane Doe that they should not see each other again. Jane Doe was upset about John Doe's denial of her feelings, and expressed regret and concern that she had been with John Doe all day without checking in with her boyfriend. *Id.*

65) Soon after the conversation that ended their relationship, Jane Doe left John Doe's apartment. Jane Doe appeared sober to John Doe when she left his apartment. Not long after she left, she contacted John Doe to ask if they could talk the next day. John Doe refused to communicate with or see her again after the Last Date because she wanted more from the relationship than he did and he did not want to mislead her. *Id.*

66) At all times between their First Date and their Last Date, Jane Doe and John Doe's multiple sexual encounters were wholly consensual. The photographs, texts and cards that Jane Doe sent to John Doe demonstrate that Jane and John Doe were involved in a consensual sexual relationship. (*Exs. L-P)*

67) John Doe graduated from OSU with a Bachelor's degree in Biology in May 2014. After graduating, John Doe remained in Columbus, Ohio employed as a full-time RN at OSUWMC working towards his goal of attending medical school.

68) During the fall semester of 2014, John Doe took a medical terminology class at OSU, which he was eligible to take because he was an OSU employee. John Doe was not taking this class for credit towards a degree.

OSU'S INVESTIGATION AND DISCIPLINE OF JOHN DOE

69) Seven months after their Last Date, on or about November 20, 2014, Jane Doe contacted OSUWMC to file a complaint alleging that John Doe had sexually assaulted her during the sexual encounter in the shower at John Doe's apartment on the Last Date. (*See OSU Documents)*

70) After receiving the complaint, OSUWMC told John Doe that a complaint of sexual assault had been filed against him and placed him on administrative leave on November 20, 2014. John Doe had no idea at this point who had filed the complaint. Upon information and belief, OSUWMC contacted OSU's Office of Student Life about the complaint from Jane Doe. Thereupon, OSUWMC and the Office of Student Life conducted parallel investigations into the Last Date. (*See OSU Documents & Exhibit H)*

71) On December 4, 2014, John Doe received a letter from OSU's Office of Student Life that Jane Doe had filed a complaint alleging that he had violated OSU's Code of Student Conduct (*Exhibit Q)*. Specifically, the letter notified John Doe that Jane Doe had accused him of sexual misconduct, non-consensual sexual intercourse, endangering behavior, and non-consensual sexual contact in April 2014. John Doe was shocked to learn that Jane Doe had made this accusation. The letter directed John Doe to schedule a meeting with Defendant Smith, who was investigating the case. Defendant Smith instructed John Doe to be prepared "to discuss the incidents involving [Jane Doe] since fall semester 2014 and in particular an incident from April 2014 . . . ." Moreover, the December 2, 2014 letter directed John Doe to have no contact with Jane Doe, as follows: "I am directing you to

have no contact of any sort with [Jane Doe]. This includes any attempted contact through third parties or electronic means (text, phone, etc.) or through social media (Facebook, Twitter, Instagram, etc.). Failure to follow this directive may result in immediate disciplinary action including interim suspension." (*Id*.)

72) John Doe's Due Process rights and/or Title IX rights were violated in part because OSU's Office of Student Life investigated the alleged incident and subjected John Doe to discipline even though he was not a "student". Section 3335-23-03 of OSU's Code of Student Conduct (effective June 18, 2012) (*Exhibit R*) OSU exercised jurisdiction over John Doe even though the Code of Conduct did not provide for such jurisdiction in order to achieve the intended gender-biased result. *See also, Exhibit S, March 12, 2015 Student Conduct Appeal*.

73) Even if John Doe was a "student" under the Code of Student Conduct, John Doe's Due Process rights and/or Title IX rights were also violated in part because OSU's Office of Student Life investigated the alleged incident and subjected John Doe to discipline even though OSU lacked jurisdiction. Section 3335-23-02 of the Code of Student Conduct describes the situations in which OSU can exercise jurisdiction over students, none of which applied to John Doe. OSU exercised jurisdiction over John Doe even though the Code of Student Conduct did not provide for such jurisdiction in order to achieve the intended gender-biased result. *See also, Exhibit S, March 12, 2015 Student Conduct Appeal*.

74) John Doe questioned whether or not the OSU Office of Student Life had jurisdiction over the allegations brought against him because he had graduated, the incident did not happen on campus, and there was no danger to the OSU community relating to a 7-month old

complaint involving individuals who had been in a long-term relationship and who have had no contact since the alleged incident. OSU denied John Doe's jurisdictional challenge, and informed him that it was his choice whether or not to participate, but that both investigations would proceed and required that John Doe strictly comply with all deadlines. (*Exhibit T*) The outcome, however, would at a minimum impact his employment at OSUWMC, so John Doe had no choice but to participate in the investigation.

75) John Doe's Due Process rights and/or Title IX rights were violated in part because OSU's Office of Student Life investigated Jane Doe's complaint even though it was untimely. OSU's Student Code of Conduct, Section 3335-23-06 provides that the written complaint must be filed as soon as practicable, but not more than six months after the alleged misconduct, unless extraordinary circumstances exist. (*Exhibit R).* Jane Doe's Complaint was filed seven months after the alleged April 2014 incident. Moreover, at some point, Jane Doe was allowed and/or encouraged to amend her complaint to add allegations that John Doe also sexually assaulted her over two years ago on their First Date in September 2012. Upon information and belief, Jane Doe neither presented nor was asked to present evidence of extenuating circumstances for her delayed filing. Rather, OSU investigated the untimely complaint because Jane Doe was a female alleging sexual assault while requiring John Doe, the accused male, to stringently comply with all procedural requirements contained in the Code of Student Conduct. (*OSU Documents)*

76) John Doe met with Defendant Smith and Brandon Gibbs, the Human Resources representative conducting the investigation on behalf of OSUWMC on December 18, 2014 and cooperated with the investigation into Jane Doe's allegations. Due to his work schedule, John Doe had requested that the investigation be conducted at a different time.

This request was denied and John Doe was forced to hold his interview following a period of 24 hours when he had no sleep due to his work schedule. (*Exhibit T)*

77) On December 4, 2014, Defendant Smith met with Jane Doe and her advisor, Defendant Spiert, OSU's Student Advocacy Program Coordinator. Upon information and belief, Defendant Spiert holds gender-biased views against male students. As support for this assertion, OSU's Office of Student Life's Sexual Civility and Empowerment website contains a link to Defendant Spiert's, TEDx talk about "Sexual Assault on College Campuses." Defendant Spiert quotes the statistic that ¼ college women are raped. Defendant Spiert admits that the majority of students accused of sexual assault are male. Defendant Spiert uses gender-biased examples to portray male students as sexual predators who are committing sexual assaults on campus "all the time." Defendant Spiert provides an example of a sexual assault that happens "a lot" where a happy "Johnny" has an orgasm and goes to bed. Defendant Spiert suggests that the access to porn on the internet and the lack of sexual education in middle school and high school has created male students who are not interested in anything except their "own sexual fulfillment." While portraying male students as sexual predators, Defendant Spiert portrays female students as victims of sexual assault and incest who have learned they have no power to say no to sex and believe they are required to have sex with a boy they like. *Id.; http://tedxtalks.ted.com/video/Sexual-Assault-on-College-Campu*. Defendant Spiert's stereotypical and gender-biased message is echoed throughout OSU's policies and websites, which purport to address sexual violence against female and male students, but in actuality address or are intended to address only sexual violence against female students. *See, e.g., OSU's sexual violence blog*,

"Destroying Double Standards for Men and Women," March 26, 2015, https://osusvc.wordpress.com/what-we-did-last-year/.

78) John Doe's Due Process rights and/or Title IX rights were violated in part because OSU provides female victims of sexual assault (such as Jane Doe) with trained advocates (such as Defendant Spiert) to serve as their advisors during OSU disciplinary proceedings while male students are not provided advisors, in particular advisors who are employed full-time by OSU to serve exclusively as Sexual Violence Support Coordinators. http://www.titleix.osu.edu/sidebar-resources/response/resources.html; http://sce.osu.edu/about-us.

79) Defendant Smith conducted a follow-up investigatory meeting with Jane Doe and Ms. Spiert on January 16, 2015 and again on February 26, 2015. Defendant Smith and Mr. Gibbs interviewed Jane Doe's Friend on January 27, 2015. No other interviews were conducted during the investigation. *(See OSU Documents)*

80) Upon information and belief, Defendant Spiert conspired with Jane Doe to provide false and/or misleading testimony against John Doe. (*See OSU Documents)*

81) Upon information and belief, Defendant Smith conspired with Defendant Spiert and Jane Doe to assist with the preparation of false and/or misleading testimony against John Doe. (*OSU Documents)*

82) John Doe's Due Process rights and/or Title IX rights were violated in part because Defendant Smith's investigation of Jane Doe's complaint was discriminatory and motivated by gender-bias against male students. Evidence of this includes, but is not limited to, the following:

a) Jane Doe was permitted to change her story on multiple occasions in response to statements and evidence from John Doe (*OSU Documents)*

b) Upon information and belief, Jane Doe was coached to bolster her case by adding allegations that John Doe also sexually assaulted her on First Date (*OSU Documents)*;

c) Upon information and belief, Jane Doe was coached to testify that John Doe was demanding and controlling during their relationship, when in fact Jane Doe was the aggressor and initiator of sexual activity during their relationship, in order to stereotype John Doe as an aggressive, predatory male. In addition, upon information and belief, Jane Doe was coached to change her allegations concerning the contact in the shower so that John Doe would receive the most extreme punishment. *(OSU Documents)*;

d) Upon information and belief, Jane Doe was encouraged to produce evidence that she had discussed the Last Date with someone else to explain the delay in reporting. In response, Jane Doe said that she had a text exchange with Friend. Jane Doe, however, delayed in producing the alleged text exchange and, when she finally produced it, the appearance of the text messages created a question as to the credibility and authenticity of the texts, which were not verified by OSU and/or State Defendants. OSU had reason to verify the authenticity of the text message because she provided two different copies of the same text, but the two messages appears different. (*OSU Documents & Exhibit KK*)

e) Upon information and belief, Jane Doe was encouraged to produce cell phone records after being informed by Defendant Smith that John Doe was attempting to obtain cell phone records as a part of his defense.

83) On Friday, February 6, 2015, Defendant Smith sent John Doe a letter by e-mail notifying him that she had determined that enough evidence existed to charge John Doe under the Code of Student Conduct, and included a Charge & Process Form. (*Exhibit V).* The Charge & Process Form formally charged John Doe with alleged violation of OSU's Code of Student Conduct sections 3335-23-04(C) Sexual Misconduct, 3335-23-04(C1) Non-consensual sexual intercourse, 3335-23-04(B1) Endangering Behavior, and 3335-23-04(C2) Non-consensual sexual contact. *Id.* Due to the gender-biased nature of the investigation, as detailed above, the specific allegations in the Charge & Process Form were greater than those contained in Jane Doe's original complaint or statement, as follows: "Specifically, it is alleged that on two occasions, *the first around the middle of September 2012* and the second on April 21, 2014, you violated Ohio State's Code of Student Conduct in the following manner: Had sexual contact *and intercourse* with [Jane Doe] with[ ]out her affirmative and knowing consent while she was *substantially impaired* by alcohol consumption." (*Exhibit V, emphasis added).* The Code of Student Conduct does not define the term "substantially impaired."

84) John Doe was provided five days (including the weekend) to decide whether or not to accept the Charges and if he wanted a hearing before a University Hearing Officer or the University Conduct Board. *Id.* On February 9, 2015, John Doe returned the Charge & Process Form choosing not to accept responsibility for the alleged violations and requesting a hearing before the University Conduct Board. (*Exhibit V*)

85) Brandon Gibbs concluded the portion of the investigation relating to John Doe's employment at OSUWMC on or about February 20, 2015 by preparing the Case Report attached as *Exhibit H.* The Case Report addressed only who initiated contact after Jane Doe's September 2012 ER visit and noted that it would adopt the findings from the University Conduct Board Hearing relating to the sexual assault allegations. *Id.*

86) John Doe's Due Process rights and/or Title IX rights were violated in part because Defendant Smith served as investigator, prosecutor, and judge of John Doe. For example, Defendant Smith was responsible for reviewing the evidence and making the charging decision. In addition, Defendant Smith controlled decisions regarding the admission of relevant evidence and was responsible, at least in part, for the exclusion of relevant evidence, as detailed below. (*OSU Documents & Exhibits W & Z)*

87) In allowing Defendant Smith to serve as investigator, prosecutor, and judge of John Doe, OSU and/or State Defendants violated Due Process concerns issued by the U.S. Department of Justice's ("DOJ") Office in its May 9, 2013 findings in DOJ Case No. DJ 169-44-9, OCR Case No. 10126001, which state: ". . . the dual role of [a university employee] in investigating [University of Montana] complaints and presenting the case on behalf of the University to the University Court creates a potential conflict that can deprive . . . an adequate, reliable, and impartial investigation. . . [therefore prohibiting] the same official playing these dual roles of investigator and 'prosecutor' . . . will ensure that individuals who play a role in . . . processing student complaints . . . do not have any actual or perceived conflicts of interest in the process." http://www.justice.gov/sites/default/files/opa/legacy/2013/05/09/um-ltr-findings.pdf

88) Section 3335-23-10 of OSU's Code of Student Conduct states that the disciplinary procedures are designed to ensure fairness. But, as detailed in this Complaint, OSU and/or State Defendants' unlawful discipline of John Doe was corrupted by gender based bias which resulted in his being denied a "fair and impartial" disciplinary proceeding at OSU.

89) John Doe's Due Process rights and/or Title IX rights were violated in part because OSU and/or State Defendants improperly trained University Conduct Board hearing panel members to apply a lower standard for determining consent than what is required in Section 3335-23-04(C) of the Code of Student Conduct. For example, in response to John Doe's public records request, OSU produced OSU's "University Conduct Board Title IX Training: Handling Sexual Violence Cases." Although the Code of Student Conduct provides that consent cannot be given if a student is "substantially impaired," OSU trained its hearing panel members on pages 11-12 that consent cannot be given if the complainant was "impaired" by drugs or alcohol and that consent is invalid "due to intoxication." (*Exhibit G*).

90) OSU also violated John Doe's Due Process rights and/or rights under Title IX because it did not provide John Doe with the names of individuals who would sit on the University Conduct Board Hearing Panel ("Hearing Panel"); and therefore denied John Doe the opportunity to raise bias concerns regarding the following OSU employees that would sit on his Hearing Panel: Leslie Robinson, Bowen House Hall Director from the Office of Student Life University Housing; Terrence Brown, Staff Assistant, Verification and Awarding, Student Financial Aid; Jennifer Shields, Residence Hall Director, University Housing; Charles Anderson, Competitive Sports, Assistant Director, Office of Student Life

Recreational Sports' and Charles Noble, Legal Policy Analyst, Kirwan Institute for the Study of Race and Ethnicity.

91) Because of time constraints, John Doe was unable to investigate bias concerns regarding Hearing Panel members.

92) On February 19, 2015, OSU notified John Doe by e-mail that his University Conduct Board Hearing would take place on Friday, March 6, 2015 at 8:00 a.m., and that Defendant Page would be the coordinator for the hearing. (*Exhibit X*)

93) On Friday, February 27, 2015 at 4:18 pm, OSU notified John Doe by e-mail that the hearing packet for his University Conduct Board Hearing was available, notified him that new evidence had been submitted since he last reviewed the file, and stated that he could schedule a time to review the file prior to the hearing. (*Exhibit Y)*

94) In e-mails exchanged the following week, John Doe arranged to review the file and was notified by Defendant Smith that it was advisable he provide evidence in his support prior to the hearing so that she could determine whether or not the evidence was relevant and would be considered. Upon information and belief, Jane Doe was neither required nor advised to submit evidence prior to the hearing for a relevancy determination. When John Doe reviewed the file, the text messages between Jane Doe and Friend were not in the file and Jane Doe's cell phone records were not in the file. (*Exhibit Z & OSU Documents)*

95) After reviewing the file, on March 5, 2015, John Doe requested a one-week continuation of the hearing because of difficulty obtaining electronic evidence necessary for his defense, including phone and text records to demonstrate that he and Jane Doe had been in contact between late fall 2014 through spring 2015. Defendant Smith denied the request as being untimely under Section 3335-23-09 of the OSU Code of Student Conduct. This denial,

while allowing and encouraging Jane Doe to file untimely complaints of sexual assault, is further evidence of OSU's gender-bias against male students such as John Doe.

96) On March 6, 2015, a Hearing was conducted in front of the Hearing Panel, which OSU recorded via an audio recorder. John Doe was not permitted to audio record the hearing, even though Ohio law permits him to do so. The Hearing Panel consisted of the individuals identified above. John Doe's Due Process rights and/or Title IX rights were violated during this hearing (and throughout the disciplinary process) because John Doe's attorney could serve as his advisor, but could was not permitted to "actively participate." Code of Student Conduct Section 3335-23-10(B).

97) On the afternoon of the hearing, John Doe was forced to resign from his position at OSUWMC in an effort to save his career. Specifically, OSU notified John Doe that he could voluntarily resign or face termination and charges with the nursing board (*Exhibit AA*)

98) John Doe repeatedly requested OSU provide him a copy of the audio recording of the March 6, 2015 hearing, but OSU failed to provide John Doe a copy of this audio recording. In withholding this audio recording, OSU and/or State Defendants violated John Doe's Due Process rights and/or rights under Title IX.

99) Similarly, John Doe's Due Process rights and/or Title IX rights were violated in part because prior to the Hearing, John Doe was not provided a summary of the testimony of witnesses to be used against him. (*OSU Documents)*

100) John Doe's Due Process rights and/or Title IX rights were violated in part because Jane Doe's Friend was permitted to offer testimony that was hearsay, was permitted to provide character evidence supporting Jane Doe, was asked leading questions evidencing a gender-

bias against males, and was asked questions for which she lacked personal knowledge. Evidence to support this assertion includes, but is not limited to the following: testimony that Jane Doe was raped even though Friend was not present; testimony concerning the level of Jane Doe's intoxication on April 21, 2014, even though Friend was not present; and leading questions about the nature of Jane and John Does' relationship to establish gender-based stereotypes concerning John Doe. In addition, upon information and belief, Friend holds gender biased views against male students because she alleges that she was previously raped by a male, which was not considered by the Hearing Panel. Notably, the Hearing Panel heard the testimony of Friend, who lacked any firsthand knowledge, first. *(OSU Documents)*

101) After Friend testified, Jane Doe testified second and John Doe testified last. Although John Doe, unlike Jane Doe, was not permitted character witnesses at the hearing, John Doe presented three written character references from co-workers at the OSUWMC, attached hereto as *Exhibit BB.* In violation of John Doe's Due Process and/or Title IX rights, the Hearing Panel failed to consider the character references from its own employees in support of John Doe in order to achieve the intended gender-biased result of finding John Doe guilty of sexual assault.

102) John Doe also presented evidence demonstrating that Jane Doe's testimony was inconsistent and inaccurate, in particular her testimony relating to the alleged incident on the Last Date and the dates and types of interaction that Jane and John Doe had in late 2013/early 2014. The Hearing Panel also failed to consider evidence questioning the credibility of Jane Doe in order to achieve the intended gender-biased result. For example, John Doe submitted the photographs, text messages, and cards referenced above to

demonstrate the nature and timing of Jane and John Doe's relationship, which OSU and/or State Defendants refused to consider or make a part of the file. (*OSU Documents)*. However, OSU and/or State Defendants allowed Jane Doe to rely on the history of their relationship in supporting her claim and also allowed Jane Doe to submit incomplete cell phone records to support her version of the timing of their relationship. Jane Doe's cell phone records, which are missing a critical month and do not contain record of text messages, were admitted and considered. In violation of John Doe's Due Process and/or Title IX rights, the Hearing Panel failed to consider the evidence questioning the credibility of Jane Doe in order to achieve the intended gender-biased result. (*OSU Documents)*

103) John Doe's Due Process rights and/or Title IX rights were violated in part because the Hearing Panel's conduct during the Hearing exhibited gender-bias against males such as John Doe. For example, Hearing Panel members: (a) asked questions and made comments downplaying facts proving Jane Doe initiated physical contact with John Doe when she knew or should have known he was incapacitated by alcohol; (b) coaxed Jane Doe to provide testimony that reinforced gender biased stereotypes of male students such as John Doe being controlling and wanting to initiate unwanted physical contact; and/or (c) allowed Jane Doe to make an impact statement about the alleged misconduct before making any determination of whether a rule was violated, thereby encouraging the Hearing Panel's members to make decisions based on archaic assumptions about males or evidence that is irrelevant to the issue before the panel. (*See OSU Documents)*

104) On the same day of the hearing, Defendant Page sent John Doe *Exhibit CC* which informed John Doe that he was: (a) found responsible for violating OSU's Code of Student Conduct §§ 3335-23-04(C), (C1), (B1) & (C2); and (b) "permanently dismissed from the University

beginning March 6, 2015, without the opportunity to reenroll in the future. Dismissal will be permanently noted on your academic transcript. You may not enter or be present on any OSU campus or property." Further, Defendant Page instructed John Doe that he was to have no contact or communications with Jane Doe either directly or indirectly. *Id.* In other words, John Doe was found responsible for all allegations and given the most extreme punishment available.

105) The Hearing Panel's decision violated John Doe's Due Process rights and/or Title IX rights in part because he was provided no explanation of why he was found responsible. Upon information and belief, John Doe was required to prove his innocence. As support for the allegation that John Doe and other similarly situated students are not "innocent until proven guilty," John Doe relies on the fact that OSU's Code of Student Conduct does not address who bears the burden of proof when sexual misconduct is alleged and does not state that the accused is innocent until proven guilty. (*Exhibit R)*

106) In addition, the Hearing Panel's Decision violated John Doe's Due Process rights and/or Title IX rights because, in response to pressure from the DOE, OSU applied a preponderance of the evidence standard for determining liability. Prior to the DOE's Dear Colleague Letter and the DOE's investigation into OSU's Title IX compliance, OSU required that liability be demonstrated by clear and convincing evidence. DOE required this change to achieve the gender-biased objective of finding more male students responsible for sexual assault. As OSU admits, the change in evidentiary standard has achieved this desired gender-biased result for John Doe and other similarly situated students. *See, Exhibit DD OSU's Office of Student Like "Let's Talk about Consent"* presentation dated January 27, 2015. The notes to Slide 14 of that presentation state: "OSU

uses dismissal as the standard sanction when penetration of any kind has occurred. We have already dismissed several students under this new standard. Coupled with the evidence standard being changed from ‘clear and convincing’ to “preponderance of evidence”, it will happen more frequently.” *Id.* This entire presentation discusses males committing sexual assault, which provides further support for the allegations that although OSU has created policies and procedures that are gender-neutral, the purpose and effect of those policies are in fact gender-biased against male students. *See, id., notes to Slide 7 (“Society’s messages - gender based: Women use indirect communication so as not to hurt feelings, role is sexual gatekeepers, interested in long term relationships Men: Focus on women’s dress as a cue for woman’s sexual interest (women did not cite this), instigators of sexual activity, casual sex is a “conquest” Lindgren, et. al., JCSD, Sept/Oct 2009”); notes to Slide 12 (“Males give women the responsibility to say yes or no, ‘if you don’t say yes or no then it is a yes.”); and Slide 13 (discussing reducing sexual violence by including “alcohol prevention messaging in sexual violence prevention messaging”).*

107) The Hearing Panel’s decision violated John Doe’s Due Process rights and/or Title IX rights in part because the Hearing Panel relied on training they received from OSU’s Office of University Compliance and Integrity: Title IX Program instructing the hearing officers to find that consent to sexual activity cannot be given if the complainant was impaired at all by alcohol and disregarding Section 3335-23-04(C) of the Code of Student Conduct, which establishes that consent cannot be given if an individual is substantially impaired. *See, Exhibit G, pp. 11-12 of training materials).* Upon information and belief, the Hearing Panel’s application of this lower standard was applied and intended to achieve the gender-biased result of finding John Doe guilty, but imposing no discipline upon Jane Doe. If OSU

had applied this training equally and without gender bias, then Jane Doe would have received the same discipline as John Doe.

108) Upon information and belief, and supported in part by *Exhibits G and CC*, OSU's administrators and hearing panel members have been trained that the prevention of sexual misconduct is of primary concern following the receipt of the "Dear Colleague Letter" and as a result of the DOE investigation and resolution. Notably, the same administrators and hearing panels have not received comparable training about the importance of protecting the due process rights of the accused.

109) The Hearing Panel's decision violated John Doe's Due Process rights and/or Title IX rights in part because the testimony and evidence presented at the hearing proved by the preponderance of the evidence that: (a) John Doe had no independent recollection of having sexual contact with Jane Doe on their First Date or of what occurred with Jane Doe in the shower on their Last Date either because his excessive alcohol consumption caused him to lose consciousness and/or become incapacitated or because the events never actually happened; and (b) Jane Doe initiated physical contact with John Doe when she knew or should have known John Doe lacked the capacity to consent pursuant to OSU's policies.

110) The Hearing Panel's decision violated John Doe's Due Process rights and/or Title IX rights in part because OSU applied an automatic sanction of permanent expulsion (*see Exs. B, C & CC)*, when Section 3335-23-17 of OSU's Code of Student Conduct requires determining the level of sanction on a case-by-case basis with consideration of mitigating factors. The imposition of automatic suspension for sexual assault cases, which OSU admits applies to male students, is gender-biased and intended to achieve the objective of finding more male

students guilty of sexual assault. John Doe and other similarly-situated male students were subjected to this gender-bias.

111) At all times relevant to this Complaint, John Doe and Jane Doe were similarly situated in part because they were both students at OSU who consumed alcohol prior to engaging in physical contact with another student who consumed alcohol.

112) If OSU and/or State Defendants applied OSU's policies and procedures in a gender neutral manner, both Jane Doe and John Doe should have received the same discipline. Therefore, OSU and State Defendants' discipline of John Doe evidences gender-bias in part because OSU never disciplined Jane Doe while permanently expelling John Doe.

113) The Hearing Panel's conduct in the Hearing and decision proves the gender neutral statements in OSU's sexual assault policies and/or training materials are a pretext for allowing discrimination against male students like John Doe. Evidence in support of this allegation exists in the contradiction between the Hearing Panel's conduct in the Hearing and the outcome of the Hearing and *Exhibit G* which contains OSU's University Conduct Board Title IX Training: Handling Sexual Violence cases presentation stating hearings "need to ensure fairness for all involved."

114) The Hearing Panel's decision violated John Doe's Due Process rights and/or Title IX rights in part because the preponderance of evidence proved he did not violate OSU's policies.

115) On or about March 12, 2015, John Doe exercised his rights under the Code of Student Conduct to appeal the Hearing Panel's findings and sanctions by presenting *Exhibit S* to Defendant Dr. Javaune Adams-Gaston, OSU's Vice President for Student Life. John Doe's appeal disclosed anti-male gender bias on the part of Hearing Panel. This bias included,

but was not limited to, OSU's lack of jurisdiction over John Doe and the following statements from John Doe's appeal:

(a) Given the weight of evidence that I provided that directly contradicted several of [Jane Doe's] statements, and the lack of evidence substantiating her claims, the Board committed a procedural error in the application of the preponderance of evidence standard. . . .

(b) "[O]n at least two occasions, [Jane Doe] has amended her original statement in response to my submission of evidence directly contradicting her. Initially, her statement did not even include mention that she believed we had sexual contact in April 2014. When I pointed this fact out, ***she was re-interviewed and permitted to change her statement*** to include her supposed new and improved memory, and to refute my statement that we had sexual contact before we consumed alcohol."

(c) "As neutral and unbiased fact-finders, the Board had an obligation to weight the quantity and quality of the information they were provided and to come to a fair and just result. Based upon the evidence that was available to them that raised serious and significant questions of the credibility of [Jane Doe's] statements and allegations, it cannot be said that her story is more likely than mine. My statements have never changed, the evidence I've provided has corroborated my statements and contradicted hers, yet my claims of innocence apparently fell on deaf ears."

(d) Jane Doe was permitted to submit new evidence on the morning of the hearing; and

(e) Support that the decision violated Title IX's mandate against sex discrimination and violated [John Doe's] rights to due process, in part because of pressure from the U.S. Department of Education, Office of Civil Rights, by citing the following:

(i) "Elizabeth Bartholet, a veteran law professor at Harvard's Law who teaches civil rights and family law, called the federal government's recent campaign against colleges 'madness' and said history would prove it wrong on the law. (Prof. Bartholet has been an outspoken opponent of policies that she and others law professors say strip students accused of sexual assault of their due process rights." *See Exhibit E-2 through E-3 to Exhibit S, Harvard Law Professor: Feds' Position on Sexual-Assault Policies is 'Madness,' The Wall Street Journal, Dec. 31, 2014.*

(ii) "A group of 16 University of Pennsylvania Law school professors has [a] signed a letter decrying the university's new sexual-misconduct policy, which they say fails to protect the rights of the accused. . . . "The Penn

> professors say by pressuring schools to change their disciplinary procedures, the Obama administration has effectively created a new regulation under Title IX, which prohibits gender discrimination at schools receiving federal funds, without going through the usual rule-making process." *Exhibit E-4 through E-5 to Exhibit S, Penn Law Professors Blast University's Sexual-Misconduct Policy, The Wall Street Journal, Feb. 18, 2015.*

116) On April 7, 2015, Defendant Dr. Adams-Gaston sent *Exhibit EE* to John Doe which rejected his appeal without specifically addressing John Doe's factual basis for challenging the Hearing Panel's findings and sanctions on the basis of gender bias. Again, the appeal denial provided John Doe with no explanation as to why he was found responsible for the allegations.

117) ATIXA's Tip of the Week discussed in the preceding paragraph – and contained in *Exhibit FF* - explains how five colleges "got it completely wrong" in finding male students responsible for "hook-ups" when alcohol was involved. *Exhibit EE*. ATIXA expressed concerns that these colleges are making "Title IX Plaintiffs" of the students who were wrongly accused. And, ATIXA noted:

> "A common policy problem comes from failing to distinguish between intoxicated and incapacitated. Yet, the most serious issue comes from failing to implement a mens rea, if you will, within the definition. Certainly, criminal concepts like mens rea are not strictly applicable to the campus conduct process, but if we agree as I stated above that having sex with a willing, yet intoxicated person is not an offense, there must be something that the respondent does, beyond having sex, that makes a lawful act (sex) into a policy violation . . . ***there has to be something more than an intent to have sex to make this an offense. Otherwise, men are simply being punished for having sex, which is gender discrimination under Title IX, because their partners are having sex too and are not being subject to the code of conduct for doing so. Without a knowledge standard, a respondent will suffer an arbitrary and capricious application of the college's rules***." *Id.* (emphasis added).

118) Defendant Adams-Gaston ignored ATIXA's Tip of the Week when she sent *Exhibit DD* to John Doe upholding the decision of the Hearing Panel without addressing John Doe's factual or procedural bases for challenging the decision. Defendant Adams-Gaston also ignored instruction on OSU's Title IX page that **"[a] person who is incapacitated due to the influence of alcohol or drugs is not able to consent to sexual activity."** http://titleix.osu.edu/sidebar-resources/what-is-title-ix/sexual-harassment-and-sexual-violence.html

119) Upon information and belief, OSU and/or Defendant Adams-Gaston's failure to remedy the gender bias John Doe suffered at the hands of OSU employees was caused in part by anti-male publicity related to the November 2014 *Rolling Stone* article entitled "*A Rape on Campus: A Brutal Assault and Struggle for Justice at UVA*," which described the now-debunked tale of a female student who alleged she was a victim of gang rape at the University of Virginia.

120) OSU and/or State Defendants violated John Doe's Due Process rights and/or rights under Title IX in part because it applied OSU's Code of Student Conduct § 3335-23-04(C) in a gender biased fashion. Section 3335-23-04(C) defines: "Sexual Misconduct" as: "[p]hysical contact or other non-physical conduct of a sexual nature in the absence of clear, knowing, and voluntary consent, including but not limited to." Even though OSU and/or State Defendants knew or should have known Jane Doe violated this prohibition by initiating physical contact with John Doe when he was incapable of giving consent, neither OSU nor State Defendants disciplined Jane Doe. Instead, OSU and/or State Defendants unlawfully chose to prosecute the male victim of Jane Doe's sexual misconduct.

121) OSU and/or State Defendants violated John Doe's Due Process rights and/or rights under Title IX in part because it applied OSU's Code of Student Conduct § 3335-23-04(C1) in a gender biased fashion. Section 3335-23-04(Ci) defines: "Non-consensual sexual intercourse" as: "any sexual penetration (anal, oral, or vaginal), however slight, with any body part or object by any person upon any person without consent" Even though OSU and/or State Defendants knew or should have known Jane Doe violated this prohibition by initiating physical contact with John Doe when he was incapable of giving consent, neither OSU nor State Defendants disciplined Jane Doe. Instead, OSU and/or State Defendants unlawfully chose to prosecute the male victim of Jane Doe's sexual misconduct.

122) OSU and/or State Defendants violated John Doe's Due Process rights and/or rights under Title IX in part because it applied OSU's Code of Student Conduct § 3335-23-04(B1) in a gender biased fashion. Section 3335-23-04(B1) defines: "Endangering behavior" as: "[t]aking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action. Relationship violence or intimate partner abuse may constitute endangering behavior." Even though OSU and/or State Defendants knew or should have known Jane Doe violated this prohibition by initiating physical contact with John Doe when he was incapable of giving consent, neither OSU nor State Defendants disciplined Jane Doe. Instead, OSU and/or State Defendants unlawfully chose to prosecute the male victim of Jane Doe's sexual misconduct.

123) OSU and/or State Defendants violated John Doe's Due Process rights and/or rights under Title IX in part because it applied OSU's Code of Student Conduct § 3335-23-04(C2) in a gender biased fashion. Section 3335-23-04(C2) defines: "Nonconsensual sexual contact" as: "any intentional sexual touching, with any body or object, by any person upon any

person without consent" Even though OSU and/or State Defendants knew or should have known Jane Doe violated this prohibition by initiating physical contact with John Doe when he was incapable of giving consent, neither OSU nor State Defendants disciplined Jane Doe. Instead, OSU and/or State Defendants unlawfully chose to prosecute the male victim of Jane Doe's sexual misconduct.

124) OSU and/or State Defendants violated John Doe's Due Process rights and/or rights under Title IX in part because they applied another portion of OSU Code of Student Conduct Section 3335-23-04(C) in a gender biased fashion. Section 3335-23-04 provides: "For purposes of this rule, consent shall be defined as the act of knowingly and affirmatively agreeing to engage in a sexual activity. Consent must be voluntary. An individual cannot consent who is substantially impaired by any drug or intoxicant. . . ." OSU's Code of Student Conduct does not define the term "substantially impaired" but uses the following signs in training materials and on its website to explain the term: slurred speech, dizziness/trouble maintaining balance, walking or standing; forgetfulness/memory impairments; confusion/disorientation; nausea or vomiting; and passed out. (*Exhibit G. OSU's Sexual Violence on College Campuses, p. 17; www.osu.*edu) Even though OSU and/or State Defendants knew or should have known that under OSU Code of Conduct Section 3335-23-04(C) John Doe was incapable of consenting to the physical contact initiated by Jane Doe, neither OSU nor State Defendants disciplined Jane Doe. Instead, OSU and/or State Defendants unlawfully chose to prosecute the male victim of Jane Doe's sexual misconduct.

125) OSU and/or State Defendants also violated John Doe's Due Process rights and/or rights under Title IX in part because the decision violated OSU's Title IX Nondiscrimination Notice, which is attached as *Exhibit GG* and provides:

> The Ohio State University is committed to building and maintaining a diverse community to reflect human diversity and improve opportunities for all. The university is committed to equal opportunity and eliminating discrimination. This commitment is both a moral imperative consistent with an intellectual community that celebrates individual differences and diversity, as well as a matter of law. Ohio State does not discriminate on the basis of age, ancestry, color, disability, gender identity or expression, genetic information, HIV/AIDS status, military status, national origin, race, religion, sex, sexual orientation, or veteran status in its programs, activities, employment, and admission.

Instead of complying with the Nondiscrimination Notice, OSU and/or State Defendants unlawfully chose to prosecute the male victim of Jane Doe's sexual misconduct.

126) Upon information and belief, OSU and/or State Defendants' violations of John Doe's Due Process rights and/or rights under Title IX occurred in part because of threats by the federal government that OSU could lose federal funding or face other adverse consequences if OSU did not find male students like John Doe responsible for sexually assaulting female students, as alleged in detail above.

127) In addition, OSU and/or State Defendants' actions evidence gender bias in part because these actions refused to deem Jane Doe the aggressor who initiated sexual conduct with John Doe, despite evidence to the contrary. Academic research conducted by University of Missouri Professor Dr. Bryana H. French in *Exhibit HH* addresses females acting as aggressors of sexual conduct. *See, Exhibit HH* which contains Bryana H. French, Jasmine D. Tilghman, Dominique A. Malebrahche's article *Sexual Coercion Context and Psychosocial Correlates Among Diverse Males* from the *Journal of Psychology of Men and Masculinity*, 2015 Vol.16, No., 1 42-43). Dr. French's research is addressed in also

addressed in *Exhibit II* which contains the article *Can Boys Be 'Coerced Into Sex* which reports: "43 percent of high school boys and young college men . . . reported they had an unwanted sexual experience and of those, 95 percent said a female acquaintance was the aggressor.'" *See Exhibit II*, which contains Lizzie Crocker's article *Can Boys Be 'Coerced Into Sex* from March 28, 2014 edition of *The Daily Beast*. The article also quotes clinical psychologist Dr. Greenberg who stated: "I really do believe that girls are more aggressive sexually today than they were ten years ago, and I haven't seen the same trend in boys. I think it has a lot to do with the hook-up culture where there's this permission to get involved physically without getting involved emotionally. Boys were always expected to be the sexual initiators, and now girls are doing the initiating.'" *Id.*

128) In OSU's most recent climate study on sexual assault and sexual misconduct, 5.3% of the approximately 25,000 OSU male undergraduate students who participated in the survey and 3.2% of the approximately 6,000 OSU male graduate students who participated in the survey reported being victims of sexual assault while enrolled at OSU. *See*, "Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct The Ohio State University, http://titleix.osu.edu/PDFs/AAUsurveyreport.

129) Nevertheless, upon information and belief, OSU engages in a pattern and practice of disciplining males when female students initiate physical contact with male students. As Defendant Spiert confirmed, the majority of cases handled by OSU involve complaints by females of sexual assault by males. The DOE Resolution with OSU indicates that the students found responsible for sexual assault, which upon information and belief are all male, have been permanently expelled by OSU. (*Exhibits D & E)* OSU's Office of Student Like "Let's Talk about Consent" presentation dated January 27, 2015 also confirms that all

students found responsible for sexual assault, which upon information and belief are all male, have been permanently expelled by OSU. (*Id.*).

130) State Defendants and/or OSU applied gender biased stereotyping of male students like John Doe which was sufficiently severe or pervasive to create a hostile (or abusive) environment in an educational program or activity. This conduct also provides a basis for imputing liability to OSU.

131) The conduct of State Defendants and/or OSU established an unlawfully hostile and/or abusive environment at OSU for male students who include, but are not limited to, John Doe. *See e.g., Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007), *en banc.* (establishing the following four elements of a Title IX hostile environment/sexual harassment claim: (1) plaintiff was a student at an educational institution receiving federal funds, (2) he/she was subjected to harassment based on his/her sex, (3) the harassment was sufficiently severe or pervasive to create a hostile (or abusive) environment in an educational program or activity, and (4) there is a basis for imputing liability to the institution.); *Yusuf v. Vassar College*, 35 F.3d 709 (2nd Cir. 1994)(rejecting a motion to dismiss Title IX claim filed by a male student alleging he was falsely accused of sexual assault in part because ". . . . statements by pertinent university officials, or patterns of decision-making that . . . tend to show the influence of gender."); *Zamora v. Jane Doe v. Erskine Coll.*, 2006 U.S. Dist. LEXIS 35780, *32-38 (Greenwood Div., N.C. May 25, 2006)(rejecting a motion for summary judgment in a Title IX claim where "a jury issue" was created with regards to "whether [the college] was deliberately indifferent" to Title IX discrimination); *Doe v. Bd. of Educ.*, 982 F. Supp. 2d 641, 652 (D. Md. 2012)(stating "severe or pervasive" harm can occur when Title IX plaintiff suffers "humiliat[ion] . . .

serious anxiety, fear, or discomfort . . . .")(citations omitted); *Wells v. Xavier Univ.*, 7 F. Supp. 3d 746 (S.D. Ohio 2014)(rejecting a motion to dismiss Title IX claim filed by a male student alleging he was falsely accused of sexual assault).

132) OSU and/or State Defendants engaged in deliberate indifference in refusing to implement corrective measures to address John Doe's unlawful discipline detailed above.

133) The conduct of State Defendants, and/or OSU created an unlawfully hostile and/or abusive environment for male OSU students like John Doe in part because this conduct is similar to that addressed by legal scholars documenting bias against male students accused of sexual misconduct on college campuses, as detailed above.

134) John Doe's Due Process rights and/or Title IX rights were also violated in part because OSU and/or State Defendants' knew or should have known their actions would have adverse impact on male students alleged to have engaged in sexual misconduct with a female student (and) were deliberately indifferent to this impact.

135) John Doe's Due Process rights and/or Title IX rights were also violated in part because OSU and/or State Defendants engaged in gender bias by not offering John Doe the aforementioned rights and protections that OSU Policies afforded alleged female victims of sexual assaults even though OSU and/or State Defendants knew John Doe was entitled to these rights and protections since Jane Doe engaged in physical contact with John Doe when he was incapacitated by alcohol.

136) State Defendants' conduct violated John Doe's due process rights in part by irreparably damaging John Doe's "good name, reputation, honor, or integrity" with an unlawful disciplinary proceedings that will "seriously damage [his] standing . . . [and] interfere with later opportunities for higher education and employment." *See, Goss v. Lopez*, 419 U.S.

565, 573-75 (1975). Evidence of this damage to John Doe can be located in *Paragraphs 12-13*, *supra,* which contain publications that document how falsely accused male college students suffered the same – or similar – harm as that suffered by John Doe.

137) John Doe has suffered harm because he lost current and future employment opportunities, has been denied admittance to other universities in part because of the actions of OSU, State Defendants and Jane Doe, and has suffered extreme physical and emotional harm for which he has sought treatment. (*Exhibit JJ)*

PARTIES, JURISDICTION, VENUE

138) John Doe currently resides in the State of Ohio, County of Franklin.

139) Defendant OSU is an instrumentality of the State of Ohio with its principal place of business located in Franklin County, Ohio.

140) At all times relevant to this Complaint, Defendant Jane Doe was a student at OSU residing in Columbus, Ohio. Upon information and belief, Defendant Jane Doe currently resides in New Jersey.

141) During time periods relevant to this Complaint, Defendant Adams-Gaston was employed by OSU as Vice President of Student Life.

142) During time periods relevant to this Complaint, Defendant Smith was employed by OSU in OSU's Office of Student Life.

143) During time periods relevant to this Complaint, Defendant Page was employed by OSU in OSU's Office of Student Life.

144) During the times relevant to this Complaint, Defendant Spiert was employed by OSU in OSU's Office of Student Life.

145) Upon information and belief, State Defendants are acting under regulations set forth in the Ohio Administrative Code, as well as the policies, procedures, and practices of OSU and are responsible for administering and/or operating OSU's Code of Student Conduct and Judicial System.

146) This action arises under Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681, *et seq.*, the Fifth and Fourteenth Amendments to the Ohio and United States Constitution, 42 U.S.C. §1983, and Ohio common law.

147) This Court has jurisdiction over this action by virtue of federal question jurisdiction pursuant to 28 U.S.C. §1331 and the protection of civil rights pursuant to 28 U.S.C. §1343.

148) This Court has personal jurisdiction over Defendants on the grounds that Defendants reside and/or conduct business within the State of Ohio.

149) Venue rests with this Court pursuant to 28 U.S.C. §1391 and Southern District Civil Rule 82.1 because a substantial part of the events or omissions giving rise to the claims occurred in its judicial district.

Count 1
Defamation Per Se
(against Defendant Jane Doe only)

150) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

151) Jane Doe orally and in writing defamed John Doe by falsely alleging he sexually assaulted Jane Doe ("Jane Doe's Allegations"). Jane Doe published Jane Doe's Allegations to OSU employees, OSU Students, and/or other third-parties not involved in OSU's disciplinary proceeding against John Doe.

152) Jane Doe's Assault Allegations were made with the intent to be understood by those that received the allegations that John Doe committed an offense involving moral turpitude that subjected John Doe to potential infamous punishment and therefore imputes the defamatory character of the oral and written statements.

153) Jane Doe's Assault Allegations were false and defamatory and were made with actual malice motivated by ill will, intent to deceive, improper motive, and/or an affirmative act to injure John Doe and/or reckless disregard for the truth or falsity of the oral and/or written statements.

154) In the alternative, Jane Doe negligently made the aforementioned false and defamatory statements about John Doe.

155) Jane Doe's Assault Allegations were made with the intent to harm John Doe's standing with OSU, his future educational and employment opportunities, and his standing and reputation at OSU and in the public at large.

156) As a direct result of Jane Doe's Assault Allegations, the character and reputation of John Doe at OSU and in the community at large was impaired and he suffered and will continue to suffer mental anguish, personal humiliation, and a great loss of reputation.

157) Jane Doe's conduct detailed above caused John Doe to seek medical help to address profound and ongoing psychological and mental anguish.

158) As a further direct and proximate cause of Jane Doe's Assault Allegations, John Doe was forced to resign his employment at OSU, was unlawfully disciplined by OSU, which has or will result in, among other consequences and damages, loss of employment opportunities and/or wages, loss of educational opportunities, difficulty in gaining entrance

to another university comparable to OSU, reduced future earning capacity, and attorneys' fees.

Count 2
Intentional Infliction of Emotional Distress
(against Defendant Jane Doe only)

159) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

160) When Jane Doe engaged in Jane Doe's Assault Allegations, she knew or should have known her actions would cause John Doe to suffer serious emotional injury, mental anguish, and/or a great loss of reputation.

161) Jane Doe's Assault Allegations exhibited an intentional, reckless, and/or deliberate disregard of the high degree of probability that John Doe would suffer immediate and continuing emotional distress.

162) Jane Doe's Assault Allegations caused John Doe to suffer profound and ongoing psychological and mental anguish.

163) Jane Doe's Assault Allegations were malicious, willful and/or intentional.

164) As a direct and proximate result of Jane Doe's aforesaid conduct, John Doe has suffered and will continue to suffer, severe and extreme emotional distress.

WHEREFORE, for Counts 1 and 2, John Doe demands judgment against Jane Doe as follows:

a) Damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) to compensate John Doe' past and future pecuniary and/or non-pecuniary damages caused by Jane Doe's conduct;

b) Judgment for attorneys' fees, pursuant any applicable statute;

c) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

d) Pre-judgment interest and/or post judgment interest as may be permitted by law and statute; and/or

e) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 3:
Violation of Title IX –Hostile environment sexual harassment and/or discrimination
(against OSU only)

165) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

166) Pursuant to 20 U.S.C. § 1681, Title IX is a federal statute designed to prevent sexual discrimination and/or harassment in educational institutions receiving federal funding.

167) Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, applies to all public and private educational institutions that receive federal funds, including colleges and universities. The statute prohibits discrimination on the basis of sex in a school's "education program or activity," which includes all of the school's operations. Title IX provides in pertinent part: "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The United States Supreme Court has held that Title IX authorizes private suits for damages in certain circumstances.

168) OSU receives federal financial assistance and is thus subject to Title IX.

169) Title IX includes an implied private right of action, without any requirement that administrative remedies, if any, be exhausted. An aggrieved plaintiff may seek money damages and other relief.

170) Both the DOE and the DOJ have promulgated regulations under Title IX that require a school to "adopt and publish grievance procedures providing for the prompt and equitable resolution of student…complaints alleging any action which would be prohibited by" Title IX or its regulations. 34 C.F.R. § 106.8(b) (Department of Education); 28 C.F.R. § 54.135(b) (Department of Justice).

171) Title IX mandates OSU afford equitable procedures and due process to John Doe which includes, but is not limited to: (a) having proper jurisdictional authority to conduct an investigation; (b) providing adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence, and/or (c) that OSU employees involved in the conduct of the procedures have adequate training.

172) OSU knew, or in the exercise of due care should have known, that OSU lacked jurisdiction under OSU Policies to investigate and/or discipline John Doe for a physical encounter Jane Doe initiated with John Doe when he was substantially impaired by alcohol and when he was not a student at OSU and for a complaint that Jane Doe initiated outside of the timelines provided in the Code of Student Conduct.

173) Upon information and belief, OSU knew, or in the exercise of due care should have known, employees including, but not limited to, State Defendants lacked training and ability to carry out their responsibilities under the disciplinary enforcement requirements of Title IX.

174) OSU's policies fail to meet the standards required by Title IX and/or Due Process safeguards in the United States Constitution as interpreted by United States' courts regarding how institutions of higher education conduct disciplinary proceedings.

175) Upon information and belief, in virtually all cases of campus sexual misconduct by OSU students, the accused student is male and the accusing student is female. *(OSU Documents)*

176) As detailed throughout this Complaint, OSU created an environment in which male students accused of sexual assault, such as John Doe, are fundamentally denied due process as to be virtually assured of a finding of guilt. Such a biased and one-sided process deprives male OSU students like John Doe of educational opportunities on the basis of sExhibit

177) Upon information and belief, OSU's investigation and/or discipline of John Doe was taken in order to demonstrate to DOE, DOJ, OCR, President Obama's Administration, and/or the general public that OSU is aggressively disciplining male students accused of sexual assault.

178) OSU has actual or constructive knowledge that OSU's investigation and/or discipline of John Doe posed a persuasive and unreasonable risk of gender discrimination with regard to John Doe.

179) OSU's actions and inactions detailed above and below set in motion a series of events that OSU knew, or reasonably should have known, would cause male OSU students, such as John Doe, to suffer unlawful gender discrimination.

180) OSU's investigation and/or discipline of John Doe is discriminatory and based upon or motivated by John Doe's male gender.

181) The male gender discrimination by OSU against John Doe includes, but is not limited to, providing preferential treatment to Jane Doe. This preferential treatment includes, but is

not limited to OSU's refusal to discipline Jane Doe pursuant to OSU's policies detailed above.

182) OSU employees, including but not limited to State Defendants, unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) OSU's violations of John Doe's rights under OSU Policies, Title IX, and/or guidance promulgated by ORC; and/or (b) OSU's unlawful determination that John Doe violated OSU Policies which OSU adopted pursuant to federal laws and regulations related to Title IX.

183) OSU employees, including but not limited to State Defendants, exhibited deliberate indifference by refusing to remedy: (a) OSU's violations of John Doe's rights under OSU Policies, Title IX, and/or guidance promulgated by ORC; and/or (b) OSU's erroneous determination that John Doe violated OSU Policies which OSU adopted pursuant to federal laws and regulations related to Title IX.

184) OSU's deliberate indifference caused John Doe to suffer sexual harassment and/or discrimination so severe, pervasive or objectively offensive that it deprived John Doe of access to educational opportunities or benefits (and) caused other harms detailed above.

185) Upon information and belief, OSU possesses additional documentation evidencing OSU's unlawful pattern of gender biased decision making which favors female students over male students like John Doe who are falsely accused of sexual assault. Evidence supporting this allegation includes, but is not limited to, OSU's failure to respond to John Doe's public records request.

186) OSU's hostile environment sexual harassment and/or discrimination caused John Doe to be damaged in an amount to be determined at trial.

Count 4:
Violation of Title IX – Deliberate Indifference
(against OSU only)

187) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

188) OSU employees, including but not limited to State Defendants, acted with deliberate indifference towards John Doe because of his male gender.

189) OSU employees, including but not limited to State Defendants, unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) OSU's violations of John Doe' rights under OSU's policies, Title IX, and/or guidance promulgated by ORC; and/or (b) OSU's erroneous determination that John Doe violated OSU's policies which OSU adopted pursuant to federal laws and regulations related to Title IX.

190) OSU employees, including but not limited to State Defendants, exhibited deliberate indifference by refusing to remedy: (a) OSU's violations of John Doe' rights under OSU Policies, Title IX, and/or guidance promulgated by ORC; and/or (b) OSU's erroneous determination that John Doe violated OSU Policies which OSU adopted pursuant to federal laws and regulations related to Title IX.

191) Upon information and belief, OSU possesses additional documentation evidencing its employees and/or agents' manifest gender based deliberate indifference towards John Doe and/or other similarly situated male students.

192) OSU's deliberate indifference caused John Doe to be damaged in an amount to be determined at trial.

Count 5
Violation of Title IX – Erroneous Outcome
(against OSU only)

193) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

194) OSU employees, including but not limited to State Defendants, unlawfully disciplined John Doe because of his male gender.

195) By erroneously disciplining John Doe, OSU violated OSU Policies, Title IX, and/or guidance promulgated by ORC.

196) OSU employees, including but not limited to State Defendants, unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) OSU's violations of John Doe' rights under OSU Policies, Title IX, and/or guidance promulgated by ORC; and/or (b) OSU's erroneous determination that John Doe violated OSU Policies which OSU adopted pursuant to federal laws and regulations related to Title IX.

197) OSU employees, including but not limited to State Defendants, exhibited deliberate indifference by refusing to remedy: (a) OSU's violations of John Doe' rights under OSU Policies, Title IX, and/or guidance promulgated by ORC; and/or (b) OSU's erroneous determination that John Doe violated OSU Policies which OSU adopted pursuant to federal laws and regulations related to Title IX.

198) OSU's conduct detailed above involved arbitrary and capricious violations of John Doe's Constitutional Due Process rights.

199) Upon information and belief, OSU possesses additional communications evidencing OSU's deliberate indifference in imposing unlawful discipline on John Doe on the basis of his gender.

200) OSU's wrongful discipline of John Doe caused John Doe to be damaged in an amount to be determined at trial.

WHEREFORE, regarding Counts 3-5, John Doe demands judgment and relief against OSU as follows:

(a) Damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) to compensate John Doe' past and future pecuniary and/or non-pecuniary damages caused by Defendants' conduct;

(b) Order(s) requiring OSU expunge John Doe's official OSU files of all information related to his interactions with Jane Doe;

(c) Judgment for attorneys' fees, pursuant any applicable statute;

(d) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(e) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(f) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 6
Violation of the Procedural and Substantive Component of the Due Process Clause of the Fourteenth Amendment to the United States Constitution Pursuant to 42 U.S.C. §1983
(Against State Defendants in their official capacities for injunctive relief (and) in their personal capacity for money damages)

201) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

202) The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law."

203) Fourteenth Amendment due process protections are required in higher education disciplinary proceedings.

204) State Defendants are considered state actors who owe John Doe certain protections pursuant to the Fourteenth Amendments to the United States Constitution and other Constitution provisions.

205) State Defendants' conduct detailed in this Complaint violated John Doe's Due Process rights in part by denying John Doe the "fundamentally fair [disciplinary] procedures" required by United States Supreme Court decisions such as *Goss v. Lopez*, 419 U.S. 565 (1975).

206) State Defendants' conduct detailed in this Complaint violated John Doe's Due Process rights in part by irreparably damaging John Doe's right to pursue an education and future educational and employment opportunities and occupational liberty. *See e.g., Dixon v. Alabama State Board of Education*, 294 F.2d 150, cert. denied, 368 U.S. 930, 82 S. Ct. 368, 7 L.Ed.2d 193 (1961)(stating, "[i]t requires no argument to demonstrate that education is vital and, indeed, basic to civilized society . . . [i]t is most unlikely that a public college would accept a student expelled from another public college of the same state. Indeed, expulsion may well prejudice the student in completing his education at any other institution. Surely no one can question that the right to remain at the college in which the plaintiffs were students in good standing is an interest of extremely great value.").

207) State Defendants' conduct violated John Doe's protected property interest in his education (and) right to pursue an education and future educational and employment opportunities and occupational liberty.

208) State Defendants violated John Doe's Due Process rights in part because John Doe was denied a review by a gender-neutral and impartial decision maker.

209) State Defendants violated John Doe's Due Process rights in part because John Doe was denied a "meaningful" opportunity to clear his name. *See e.g., Matthews v. Eldridge,* 492 U.S. 319, 333 (1976)(requiring disciplinary procedures that take place "at a meaningful time and in a meaningful manner.").

210) State Defendants violated John Doe's Due Process rights in part because State Defendants' prohibited John Doe from accessing information necessary for his defense and/or internal appeal.

211) State Defendants violated John Doe's Due Process rights in part because State Defendants' conduct evidenced arbitrary and/or irrational behavior which was not justified by any governmental interest.

212) State Defendants violated John Doe's Due Process rights in part because State Defendants' conduct was motivated by ill will, bad faith, and/or an intent to injure John Doe.

213) State Defendants violated John Doe's Due Process rights in part because they engaged in the arbitrary abuse of executive power so egregious that it shocks the conscience of the public. Evidence of this fact is contained in publications criticizing academics for violating the Due Process rights of male college students in the same – or similar way – that State Defendants violated John Doe's Due Process. *See e.g., Supra,* ¶¶67, 114 (referencing said publications). *See also, Exhibit* A, ¶78 (authenticating *Exhibit 77* which contains Richard Dorment's Mar. 25, 2015 article in Esquire entitled *Occidental Justice: The Disastrous Fallout When Drunk Sex Meets Academic Bureaucracy*); *Id.,* ¶79 (authenticating *Exhibit 78* which contains Ashe Schow's July 14, 2015 article in the Washington Examiner entitled

Double-Standard on campus sexual assault hearings); *Id.,* ¶80 (authenticating *Exhibit 79* which contains The Economist's Dec. 6, 2014 article entitled *Sex Crimes on Campus Professors as Judges: the folly of letting amateurs handle serious crimes*).

214) State Defendants violated John Doe's Due Process rights in part because John Doe would not have been disciplined had State Defendants acted in a gender-neutral manner.

215) State Defendants violated John Doe's Due Process rights in part because State Defendants' engaged in a gender-biased pattern and/or practice of disregarding and violating the rights of male students such as John Doe when these males were accused of sexually assaulting a female student.

216) State Defendants acted, or failed to act, under color of law, to deprive John Doe's rights and privileges secured by the Fourteenth Amendments to the United States Constitution and other Constitution provisions.

217) State Defendants' conduct evidenced an intentional, outrageous, and/or reckless disregard for John Doe's constitutional rights.

218) State Defendants' conduct towards John Doe lacked any rational basis and/or was motivated by ill will or bad faith.

219) As a result of State Defendants' Due Process violations, John Doe was suspended and suffers ongoing harm, including but not limited damage to his future educational and employment opportunities (and) and his standing and reputation which is marred in part by State Defendants' unlawful finding that John Doe engaged in sexual misconduct.

220) State Defendants' investigation and/or discipline of John Doe deprive John Doe of his interests within the meaning of "life, liberty, or property" contained in U.S. Const. amend.

XIV, § 1 in part because Defendants violate John Doe's property right to a transcript unmarred by Defendants' unlawful investigation and/or discipline of John Doe.

221) Upon information and believe, State Defendants agreed to, approved, and/or ratified the various violations of John Doe's Due Process rights detailed in this Complaint.

222) State Defendants had actual or constructive knowledge that they were engaging in conduct creating a pervasive and unreasonable risk of deprivation of John Doe's rights under the Fourteenth Amendments to the United States Constitution.

223) Because of State Defendants' unlawful actions, John Doe is entitled to injunctive relief that requires State Defendants expunge John Doe's official OSU student file of all information related his sexual encounter with Jane Doe.

224) Because of State Defendants' unlawful actions, John Doe is entitled to declaratory relief that requires State Defendants' expunge John Doe's official OSU student file of all information related his encounter with Jane Doe.

Count 7- Violation of Equal Protection Clause of the Fourteenth Amendment to the United States Constitution Pursuant to 42 U.S.C. §1983

(Against Individual Defendants in their official capacities for injunctive relief (and) in their personal capacity for money damages)

225) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

226) The Fourteenth Amendment to the United States Constitution prohibits gender discrimination.

227) As evidenced by the facts and exhibits detailed above, gender discrimination improperly caused State Defendants to unlawfully find John Doe responsible for engaging in sexual misconduct with Jane Doe.

228) Upon information and belief, female OSU students suffer no historical disadvantage regarding the discernment of consent to intimate physical relationships with male students which would allow State Defendants to validly discriminate against male students like John Doe.

229) John Doe brings these claims pursuant to 42 U.S.C. § 1983 because State Defendants' actions were taken by State Defendants under color of state law.

230) Because of these violations, John Doe has suffered considerable emotional distress, loss of present and future earnings, humiliation, and damage to his reputation as a result of State Defendants' actions.

WHEREFORE, regarding Counts 6-7, John Doe demands judgment and relief as follows:

(a) State Defendants be found liable in their official capacity to John Doe for injunctive relieve requiring OSU expunge John Doe's official OSU files of all information related to his interactions with Jane Doe;

(b) State Defendants be found liable in their personal capacity for money damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) to compensate John Doe' past and future pecuniary and/or non-pecuniary damages caused by Defendants' conduct;

(c) Judgment for attorneys' fees, pursuant any applicable statute;

(d) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(e) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(f) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 8 – Declaratory Judgment -
Violation of Due Process Provisions of United States and Ohio Constitutions
(Against OSU and Individual Defendants)

231) John Doe realleges and incorporates all the allegations contained in the preceding paragraphs of the Complaint as though fully rewritten herein.

232) The Fifth Amendment to the United States Constitution, made applicable to the State of Ohio by the Fourteenth Amendment, provides that no person shall be deprived of life, liberty, or property, without due process of law."

233) The Fourteenth Amendment to the United States Constitution provides that no state shall deprive "any person of life, liberty, or property, without due process of law."

234) Section 16, Article I, Ohio Constitution, guarantees that every person injured in his lands, goods, person or reputation shall have remedy by "due course of law."

235) The Due Process Clauses of the Ohio and United States Constitutions are implicated by higher education disciplinary decisions, including the disciplinary decisions under the OSU Code of Student Conduct.

236) OSU and Individual Defendants have a constitutional obligation to provide a fundamentally fair and reliable hearing process.

237) OSU and Individual Defendants have an additional obligation under the Ohio Administrative Code to provide a hearing process that is consistent with the customs of a free society, which includes recognition of the basic due process rights of students.

238) John Doe is entitled under the Constitutions of Ohio and the United States, as well as under the Ohio Administrative Code, to the opportunity to be heard in a meaningful manner at the OSU University Conduct Board Hearing.

239) John Doe's interested in the results of the University Conduct Board Hearing are significant.

a) Permanent expulsion and the notation of permanent expulsion from OSU on John Doe's transcript denies John Doe the benefits of his education at OSU.

b) Permanent expulsion and the notation of permanent expulsion from OSU on John Doe's transcript damages John Doe's academic and professional reputation.

c) Permanent expulsion and the notation of permanent expulsion from OSU on John Doe's transcript has and will continue to affect John Doe's ability to enroll at other institutions of higher education and to pursue his chosen career.

240) OSU and Individual Defendants have violated John Doe's due process rights in the following manner:

a) OSU and Individual Defendants conducted biased investigations, which were then provided to the Hearing Panel.

b) OSU and Individual Defendants permitted the use of hearsay evidence at the Hearing without providing John Doe with the opportunity to effectively cross-examine witnesses.

c) The Hearing Panel heard an impact statement from the alleged victim before even determining that a violation of OSU's Code of Student Conduct had occurred.

d) The Hearing Panel did not apply the OSU rules properly, including the definition of consent as set forth in OSU's Code of Student Conduct and did not apply the appropriate definitions of key legal terms.

e) John Doe was denied the effective assistance of an attorney or other advisor. An advisor was permitted to be present, but the advisor was not permitted to participate.

f) John Doe was not presumed to be "innocent until proven guilty." Instead, OSU determined that the party seeking to impose responsibility on a student does not have the burden of proof.

g) Upon information and belief, the Hearing Panel has not failed to recommend that a student be found responsible and significant discipline be imposed since the onset of the DOE investigation.

241) John Doe and State Defendants have a dispute about whether the OSU Code of Student Conduct as applied to John Doe violates the Due Process Clauses of the United States Constitution, the Due Course of Law Clause of the Ohio Constitution, and the requirement of the OAC that any hearing process be consistent with the customs of a free society.

242) John Doe is entitled to a declaration that the OSU Code of Conduct, as applied to John Doe, violated the Due Process Clause of the United States Constitution, the Due Course of Law Clause of the Ohio Constitution, and the requirement of the OAC that any hearing process be consistent with the customs of a free society.

243) John Doe is entitled to a declaration that the OSU Code of Student Conduct, as applied to John Doe, violated the Due Process Clauses of the United States Constitution, the Due Course of Law Clause of the Ohio Constitution, and the requirement of the OAC that any hearing process be consistent with the customs of a free society.

244) Pursuant to 42 U.S.C. §1988, John Doe is entitled to his attorney's fees incurred in bringing this action.

Count 9 - Injunctive Relief

245) John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

246) Based on the facts articulated above and below, John Doe is entitled to injunctive relief because OSU and/or State Defendants' discipline of John Doe is unlawful and violates John Doe' rights under OSU's policies, federal and/or state laws.

247) OSU and/or State Defendants' unlawful discipline of John Doe will cause irreparable harm which is certain, great, actual and not theoretical.

248) OSU and/or State Defendants' unlawful discipline of John Doe cannot be remedied by an award of monetary damages because of difficulty or uncertainty in proof or calculation.

249) Based on the facts articulated above, John Doe is entitled to injunctive relief which includes, but is not limited to an Order requiring OSU and/or State Defendants expunge John Doe's official OSU files of all information related to his interactions with Jane Doe.

250) The granting of injunctive relief will cause no harm to OSU and/or State Defendants because these defendants have no cognizable interest in the unlawful discipline of John Doe.

251) The granting of an injunctive relief will advance a significant and appreciable public interest by protecting members of the public – like John Doe –from having their fundamental rights threatened by unlawful government action.

WHEREFORE, regarding Counts 8 John Doe demands judgment and relief against OSU and/or State Defendants as follows:

(a) Order(s) requiring OSU and/or State Defendants expunge John Doe's official OSU files of all information related to his interactions with Jane Doe;

(b) Judgment for attorneys' fees, pursuant any applicable statute;

(c) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(d) Pre-judgment interest as may be permitted by law and statute; and/or

(e) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Respectfully Submitted,

/s/ Eric J. Rosenberg
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JURY DEMAND

John Doe hereby demands a trial by a jury in this matter.

/s/ Eric J. Rosenberg
Eric J. Rosenberg (0069958)